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WILLIAM BRANCH GILES: A STUDY IN THE POLITICS OF VIRGINIA AND THE NATION FROM 1790 TO 1830

To

ADA ASH ANDERSON,

Faithful Co-laborer

WILLIAM BRANCH GILES

From a Miniature made in Washington 1813 and now in the possession of Mrs. J. W. Sharp, Née Miss Elizabeth Townes, great-grand-daughter of Governor Giles.

William Branch Giles: A Study in the Politics of Virginia and the Nation from 1790 to 1830

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PREFACE

A life of William Branch Giles has long been a desideratum. His active labors in the formation of the Democratic-Republican Party, his long service in legislative bodies—the General Assembly of Virginia and the House of Representatives and Senate of the United States;—and his leadership in each of these bodies; his dramatic career as Governor; his spectacular appearance in newspaper and pamphlet literature as well as his reputation for marvellous forensic abilities; indeed the variety of his animosities and the conspicuousness of his many enemies—these things and others point him out as a figure worth studying. He was a friend of Jefferson and an enemy of Hamilton. He became a foe of Gallatin and Monroe. He finally espoused the cause of Andrew Jackson and developed into the bitterest of the enemies of John Quincy Adams. Like all men he went through cycles of political opinions. In the days of Jefferson he shared the idealism and enthusiasm of small farmers and artisans, of the Baptists, Presbyterians, and Methodists who crowded one another in trying to touch the hem of free-thinking Jefferson's garment; he fought against the National Bank, protective tariff, and the American Navy; he struggled against usurpations of power by the General Government. He came, however, to write drastic laws based on a broad construction of the Constitution and deplored lack of energy on the part of the Federal Government; he even coöperated in Federalist attacks on Republican administrators. He ended his career with the same ardor for State Rights and strict construction which had characterized his youth, but adopted a most un-Jeffersonian hostility to Democratic change in the Constitution of Virginia. He closed his days as an apostle of unyielding conservatism and as a prophet of secession.

The life of this remarkable Virginian has greatly interested the writer. If the story has been well told, it will interest the reader. It is a story difficult to put together because the materials have been extensive on those phases of the life which are least interesting, and scattered and few on those phases that

would prove most entertaining. Giles was a most generous public writer and copious speaker but apparently a very stingy letter writer. No effort has been omitted to discover material or to study it. Interpretation has likewise been no easy task. Although little work has heretofore been done on Giles's life, yet every writer of history for the period 1790-1830 has thought it his duty to give an estimate of this remarkable Virginian. A characteristic opinion is that of Henry Cabot Lodge who has spoken of him as a "coarse political ruffian" and "a rough, brazen, loud-voiced Virginian, fit for every bad work, no matter how desperate." The history of the time in which Giles lived has been written very largely by the descendants and partisans of his enemies—and their opinions of him have been unusually bad. It has been difficult to avoid accepting the views of the talented New England historians on the one hand or on the other, in a reaction from them, to avoid taking opinions from another school, equally as partisan. The task has been rendered the harder by the limitations of space the writer felt it necessary to obey.

The work has been made easier and more pleasant by the kind assistance of many generous friends. To Professors Dodd and McLaughlin of the University of Chicago, I owe a large debt of gratitude for years of kindness. Mr. Hunt and his staff at the Congressional Library; Dr. McIlwaine and his assistants at the Virginia State Library; Mr. Stanard and the Virginia Historical Society; Mr. Henry Adams, the famous historian of the administration of Jefferson and Madison; Mr. T. P. Giles and the members of the interested family; Dr. H. J. Eckenrode, my distinguished colleague in the Department of History at Richmond College; and many others in various parts of the country have helped when called upon.

I wish to acknowledge with particular gratitude the persistent kindness of Mr. Earl G. Swem, the immensely capable Assistant Librarian of the Virginia State Library who has several times read both the manuscript and the proof, and to Mr. E. J. Woodhouse, Instructor in History at Yale University, who gave unstintedly of his valuable time in token of a cordial friendship of many years' standing .

To my wife, more than to all others, I must make acknowledgment of never failing aid given in countless ways during the five years that this study has been around the house, and of many sacrifices which she has cheerfully made in behalf of my labor.

It is certainly only fair for me to express here my appreciation of the painstaking care, the unfailing courtesy and even the generosity of Mr. George Banta and his staff, the publishers of this book. They thoroughly know their craft, and yet are patient with young authors, who know neither the printer's craft nor their own.

I wish also to express here my appreciation of the action of the Illinois Division of the Daughters of the Confederacy in conferring upon the writer of these pages their prize for 1914. Whether their judgment as to this particular piece of work is correct or not, certain it is that their endeavor to encourage attempts at genuine scholarship in Southern History is worthy of emulation.

Richmond College, Richmond, Va.,
Sept. 2, 1914.

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WILLIAM BRANCH GILES: A STUDY IN THE POLITICS OF VIRGINIA AND THE NATION, 1790-1830

D. R. Anderson

CHAPTER I

EARLY YEARS

If legend could be accepted as truth the biographer of William Branch Giles would be compelled to go back at least as far as Roman days. For Caius Licinius Stolo, author of the Licinian rogations, also discovered "the best method of clearing away" "useless suckers" from trees and furnished to his family occasion to place the "verdant branch" upon their coat of arms. All the Branches, Brancos, Braunches, Branshes and the rest, whether found in Spain, France, Italy, England, or America, according to the story, owe the origin of their name to the horticultural genius of the ancient patriot. It may, as says the family genealogist, to whom the present writer is much indebted, be "a deal more easy to shrug aside the Licinian origin of the Branches than it is to disprove it."[1] But this writer will attempt to do neither, and will pass on therefore, to the next items in the list. The reliable history of that portion of the Branch family in which we are interested, begins with Richard Branch who moved to Abingdon in Berkshire County, England, in the latter part of the fifteenth century. This Richard was a woolen draper by trade and likewise master of the important guild entitled, the Fraternity of the Holy Cross. His second son was William Branch, mayor of Abingdon, who married into the ancient family of Bostock. Lionel, third son of the aforesaid William, was an "unthrifty and disobedient son" and left his son Christopher with such small support that at the age of seventeen years Christopher and wife set sail for the new land of promise—the land of the Virgin Queen.

They settled at "Arrowhattocks" in that part of Henrico County subsequently to be called the County of Chesterfield.

[1] James Branch Cabell,—"Branch of Abingdon." To this book and its companion, "Branchiana", I am indebted for some genealogical matter.

Christopher Branch's son and grandson bore the same Christian name as himself. The third of that prenomen had a son Henry by name, to whom was given in the providence of God a daughter, Ann. Ann Branch married William Giles, father of the subject of our biography.

William Giles, the father of William Branch Giles, was the son of John Giles, who was the son of William Giles and Bethenia Knowles, the only child of Captain John Knowles who left any issue. William Branch Giles, born August 12, 1762, was the youngest child of William Giles and Ann Branch. There was an older brother, John, who served in the Revolutionary war and received bounty lands in Kentucky which on his early death he is said to have left to his younger brother.[2] Of John an interesting story is told by Colonel William Fontaine in a letter dated October 26, 1781, seven days after the surrender at Yorktown of which he writes: "All property taken from the inhabitants by the British is liable to be claimed by them. In consequence Master Tarleton met with a most severe mortification yesterday. The hero was prancing through the streets of York on a very fiery, elegant horse, and was met by a spirited young fellow of the country, who stopped him, challenged the horse and ordered him instantly to dismount. Tarleton halted and paused a while through confusion, then told the lad if it was his horse, he supposed he must be given up, but insisted to ride him some distance out of town to dine with a French officer. This was more, however, than Mr. Giles was disposed to indulge him in, having been forced when he and his horse were taken to travel good part of the night on foot at the point of the bayonet; he therefore refused to trust him out of sight, and made him dismount in the midst of the street crowded with spectators. Many such instances have since happened on the road."[3]

[2] MS. Memoirs of Mrs. William Overton, a granddaughter of William B. Giles.

[3] Memoirs of a Huguenot Family. Translated and compiled from the original autobiography of the Rev. James Fontaine, etc., by Ann Maury, N. Y. 1853, pp. 444-447.

The father of the statesman was a man of influence in the county of Amelia and vestryman of the parish church.[4] When he died his son William Branch became executor under a bond of 5000 pounds and on the death of the widow, William B. was to receive her five hundred and seventy-six of the nine hundred and seventy-six acres belonging to the home place.[5] To these five hundred and seventy-six acres Congressman Giles—for the father died in 1793—was to add many hundred more.

To understand the life of Giles one must understand the section and county of Virginia in which he and his people for two generations before him had lived. Amelia county is one of the eastern counties of the great Piedmont section of Virginia. Set off from Prince George in 1734, it bore during the youth of Giles some of the characteristics of a semifrontier region. It was sparsely settled, its roads were bad, and though rich in gentle blood and distinguished citizens, gave to the traveler no very pleasant impression. According to a neighboring clergyman writing in 1776 "it had for many years been notorious for carelessness, profaneness, and immoralities of all kinds. Gaming, swearing, drunkenness, and the like, were their delight, while things sacred were their scorn and contempt."[6] Francis Asbury, however, writing in 1804 speaks of "solitary Amelia, with its worn out fields of hundreds of acres, and old houses falling into ruins."[7] Into Amelia as into the rest of the Piedmont and western portions of the state dissenting sects and preachers found their way. The wave of Scotch-Irish Presbyterians passing from Hanover west and the wave from the valley passing east made their contribution to the population of the circle of counties within which Amelia lay.[8] In 1771, also, the separatist Baptists of Virginia had in this county their largest congregation.[9] And in May 1780, dissenters from Amelia sent a petition to the legislature desiring that the vestries in

[4] See Order Book of Amelia County 1780-1782, 26. Meade's Old Churches, Ministers, and Families, ii, 22.

[5] Will Book of Amelia County 5:107.

[6] Asbury's Journal, vol. i, 211 (3 volume edition, N. Y., 1852).

[7] Ibid, vol. iii, 169.

[8] Meade, ii, 20.

[9] Semple, Virginia Baptists (Beale's revision), 70.

the several parishes be dissolved and hereafter be freely elected by the people; further also, that marriages by dissenting ministers be declared lawful.[10] The established church of which William Giles was vestryman had fallen into a bad way. From 1773 to 1776, the minister in Raleigh parish was Rev. John Brunskill—and to his unpopularity is attributed some of the misfortunes of the established church in the county. Brunskill was a loyalist—an imprudent loyalist. He is alleged to have declared from his pulpit that to take part in the Revolution was rebellion. The Archers, the Tabbs, the Egglestons, and probably the Gileses arose on this occasion and walked deliberately from the building threatening bodily chastisement on the "execrable parricide."[11] What Episcopalians remained faithful no doubt, were not far removed in faith and practice from the dissenting sects. The soil of Amelia, therefore, was suitable for a gospel of discontent and democracy. Amelia county was fated to follow Jefferson and Giles.

In such an environment was Giles born and brought up. Nothing whatever of his youth has come down to us. His father was anxious that his youngest son should receive an education and therefore sent him to the newly-established college of Hampden-Sidney. Hampden-Sidney College, located in Prince Edward county, the next county southwest from Amelia, was established by the Presbyterian Scotch-Irish of Virginia and was liberally patronized by ambitious young men of the Piedmont section of the state. At Hampden-Sidney, Giles was under the immediate care of President Samuel Stanhope Smith, an eloquent preacher as well as able administrator. When President Smith resigned in 1779 to accept the chair of Moral Philosophy in another Presbyterian College dear to the hearts of Piedmonters, the college of New Jersey, he took along with him a number of Virginians and Hampden-Sidney students. Indeed it was no unusual occurrence for sprightly young men from the regions of the south to make their educational pilgrimages to the famous Presbyterian College at the north. James

[10] See Copy in James's Struggle for Religious Liberty in Virginia, 70.

[11] Meade, Old Churches, Ministers, and Families of Virginia, ii, 21.

Madison and Henry Lee both had done so, and many of Giles's associates in Virginia were Princeton men. He and his negro[12] under the especial care of Professor Smith went along with the rest. Giles's most cherished friend, Abraham B. Venable, his predecessor in the Senate of the United States, and a victim of the horrible theatre fire in Richmond in 1811, was a fellow student as were the two other Venable boys, Samuel and Richard N. Also many of his associates in national politics were fellow students during a part of his course. The most distinguished of his classmates in 1781 was Edward Livingston, afterwards member of Congress, Secretary of State, and Minister to France.[13] Livingston and Giles, with four others received the degree of Bachelor of Arts at the Commencement of 1781.

From Princeton, Giles went to William and Mary, following another precedent established by eminent men—to study under the great legal teacher, Chancellor Wythe. In the Amelia County Order Book under date of December 22, 1785, occurs the following item: "On motion of William B. Giles Gent this court doth recommend the said William B. Giles to the Examiners appointed by law as a Person of Probity Honesty and Grand Demesne." On the twenty-third of March, 1786, the said "William B. Giles Gent." produced his license, and was admitted to practice in the Court.[14] Launching into the practice of the law, he qualified in the courts of Petersburg and the neighboring counties.

Petersburg, where by 1790 Giles had a "house,"[15] "was a tolerably neat little town, built along the riverside, only two streets deep, and a mile and a half in extent, on a hill of pretty rapid elevation." Its society was "polite, obliging, and hospitable." Its principal business was the tobacco trade. Wagons bearing hogsheads of this product came in from the

[12] The wealthier Virginians took negroes with them when they went off to school. For instance in 1754 eight of the students at William and Mary had negroes to wait on them.

[13] See Samuel Davies Alexander—"Princeton during the Eighteenth Century," N. Y., 1872. This gives a list of the graduating classes and very brief biographical sketches.

[14] Amelia County Order Book.

[15] Letter of Edward Bland, May 27, 1790. Ms. Va. Historical Society.

surrounding counties of Virginia, but especially from North Carolina for which Petersburg served as an emporium. As at Richmond, flour mills were in abundance, and churches scarce.[16] But this deficiency bothered young Giles no whit for he had in early days no great reputation for piety—however much the court of Amelia may have found him to be a "Person of Probity Honesty and Grand Demesne." "Giles's career at the bar," says a friend, "was rapid and successful beyond precedent." In opposition to Patrick Henry in a case, he won the praise of the great orator for his manner of conducting his side of the controversy.[17] Frequently he was called upon to plead the cases of British creditors.

It has proved impossible to find details of Giles's professional career; it is known that his career at the bar was notable. He continued the practice of the law during his congressional life, and was called by Jefferson a lawyer of eminence.[18] According to Giles himself, by 1792 he had been employed in at least one hundred British debt cases, and was "as successful in collecting monies under judgments as is usually the case with citizens of the state of Virginia." It is interesting to note his remark that "in all cases within my recollection in which the debts were established by competent testimony, judgments were rendered for the plaintiff."[19] This was also the opinion of Monroe, who says that it was always the contention of ablest counsel at the bar that there was no state law in the way of the collection of debts due British creditors, and that if there had been the Treaty would control it. However, Monroe admits that British merchants declined bringing suits before the formation of the National Government, but claims that since the peace of 1783 they had been progressing with great success in amicable settlements.[20]

[16] The Journal of Latrobe, 107-110. See also description by Schoepf in his Travels (translation by Morrison), vol. 2, 72.

[18] Am. State Papers, Foreign, I, 234.

[17] Richmond Enquirer, December 16, 1830.

[19] Letter to Jefferson, May 6, 1792. Jefferson MSS. Library of Congress. See also Am. St. Papers, For. I, 234.

[20] Am. State Papers, For. I, 234. Monroe was in a position to know, as he went all over the State pleading for the creditors.

Because of the prominence of these cases in Giles's law practice it will be desirable to give some account of the question at issue. Before the Revolution Virginia planters sent their tobacco to England in payment for British goods brought up to their very doors by British ships. The balance, however, was generally against the planter, and when the Revolution came, Virginians owed much to creditors in the old country.[21] An act of the General Assembly in 1777[22] allowed the debtor to pay his debt into the loan office of the state. Another act of 1779[23] vested British property in the Commonwealth by escheat and forfeiture. The Treaty of 1783, however, stipulated that creditors on neither side should meet with lawful impediment to the recovery of their *bona fide* debts. But despite the treaty, the British failed to surrender the western posts which they held or to make payment for negroes which they had carried off. Resolutions adopted by the General Assembly in June, 1784, declared that "so soon as reparation is made for the aforesaid infraction [carrying off negroes], or Congress shall judge it indispensably necessary such acts of the legislature passed during the late war, as inhibit the recovery of British debts, ought to be repealed, and payment made thereof in such time and manner as shall consist with the exhausted situation of this commonwealth."[24] An act of December 12, 1787, repeals all laws preventing the recovery of debts due British subjects but suspends this repeal until the posts have been surrendered and negroes paid for;[25] another act left to the courts the determination as to whether debts paid into the loan office were discharged.[26] In the meantime the Constitution and laws of the United States and treaties made under the authority of the United States had become the supreme law of the land. The cases in which Giles was interested probably all fell after 1787.

[21] The British claimed the amount was £2,000,000. The Complete Anas of Jefferson, 78.

[22] Hening 9: 377.

[23] Hening 10: 66.

[24] Journal House of Delegates, May Session, 1784, 74.

[25] Act of Dec. 12, 1787. Hening vol. 12: 528.

[26] Act, January 3, 1788.

The argument which Giles offered was probably that known to have been offered in other cases. The laws of Virginia passed during the Revolution, said British creditors, did not confiscate debts, for debts are in international law not subject to confiscation. But in any case the Treaty of 1783 was superior to the laws of the States and the Treaty had not been abrogated by violations committed by Englishmen. The cases were probably the most valuable which Giles could have argued —they necessitated a study of the statutes and history of Virginia, a reading of Vattel and all the great authorities on international law; and an interpretation of the Federal Constitution. They offered him an education, useful in his public career. But the nationalistic inclination which he immediately received was to be very quickly outgrown.

Although a faithful lawyer and little of a politician down to 1790, Giles was an interested observer of all that was going on. During the sessions of the convention of 1788 when the great struggle between the giants was taking place over the question of the ratification by Virginia of the Federal Constitution, William B. Giles was among the young men who crowded to Richmond to be spectators of the wonderful contest.[27] George Mason heard him discuss the merits of the great question at a hotel, and later in the day is said to have reported: "there was a stripling of a lawyer at the Hotel this morning who has as much sense as one-half of us, though he is on the wrong side."[28] Giles was an enthusiastic supporter of the new Constitution, and as is well-known, Mason was one of its leading opponents.

The Constitution was ratified, the government organized, Giles continued to practice law. However, in 1790 a vacancy occurred in the representation in Congress from his district through the death of Theodorick Bland. Entering the race for the vacant seat the young lawyer found himself opposed by Colonel Edmunds, a wounded veteran of the Revolutionary war, and very popular. Vigorously espousing the cause of the new

[27] Collections of the Va. Hist. Society, New Series, vols. IX, X. Grigsby's History of the Virginia Convention of 1788 edited by R. A. Brock.

[28] Enquirer, Dec. 16, 1830.

Constitution, disdaining to ask for a vote or adopt any questionable means to secure the victory, he won by virtue of his cause and his ability.[29] He entered the national service at the early age of twenty-eight and was to remain in it almost continuously for a quarter of a century. He was to play one of the most prominent rôles in the history of our national legislature.

[29] Enquirer, Dec. 18, 1830.

CHAPTER II

FIGHTING THE FEDERALISTS

To anyone who has followed the subsequent career of Giles it is diverting to learn that he bore with him to Philadelphia a letter of introduction to Madison written by John Marshall who calls the young Petersburg attorney "my friend."[30] The future chief justice, however, must have been very cautious in recommending his friends, if this letter is a fair sample of his recommendations: "My friend Mr. Giles," he says, "will present you this. He is particularly desirous of being known to you. I should not presume so far on the degree of your acquaintance with which I have been honored as to introduce a gentleman to your attention if I did not persuade myself that you will never regret or change any favorable opinion you may form of him." If Giles took the liberty of reading this letter of recommendation, one will have to admit he had good reason for his almost lifelong and bitter enmity to the great Federalist lawyer. All men of prominence were not as reticent about Giles's qualifications as was John Marshall. For a letter from Edward Carrington to Madison follows him to Philadelphia, and is interesting enough to quote in full:

"It was my intention to have committed to Mr. Giles the successor of Colo. Bland for the district[31] in which I reside, a letter of introduction to you, but his recovering from a spell of sickness and setting out for Philadelphia earlier than I expected prevented my doing so. You must before this have formed some acquaintance with him yet I cannot forbear to recommend him as my valuable friend to your particular attention—though yet a very young man he has acquired high reputation in both the superior and inferior Courts of this State—you will find him upon trial to possess real genius,

[30] Madison MSS. Library of Congress.

[31] The District was composed of the following counties: Brunswick, Sussex, Greensville, Prince George, Dinwiddie, Mecklenburg, Lunenburg, Amelia, Cumberland and Powhatan. See Act of Virginia Legislature passed November 20, 1788—Acts 1788, 4.

acquired knowledge, and solid honesty such as will make him a valuable coadjutor[32] in our representation."[33]

Although Giles entered Congress as a staunch supporter of the new government, he did not favor a government strong at the expense of the states nor a government dependent on stock jobbers and speculators. Coming from the upcountry hills of a state predominantly rural, chaperoned by James Madison, he would find no difficulty in convincing himself that the cause of the Constitution and the new government was not the same as the cause of Hamilton's policies. He was ready to accept all the ideas of Jefferson, to throw himself eagerly into the struggle against the "fearful monarchical" danger, and to stand guard over Republican principles. He reached the seat of the National Legislature too late to take part in the first fight on Assumption, bitterly opposed in his state, but he found ample opportunity to show his principles and powers in the third session of the First Congress,[34] which he entered December 7, 1790.

Placed on the Committee on Military Affairs[35] at the beginning of his Congressional service, he was for many years in House and in Senate to hold a position of influence in the discussion of military policies. On December 16, he opposed an amendment to the militia bill on the ground of "improper interference with the authority of the state Government." Thus he sounded the keynote of much of his career—defence of State Rights. Though departing, as we shall see, from this principle at times, he stood by it with more than the usual consistency of a politician. For it he was to make his last tragic struggle, when Henry Clay and John Quincy Adams were forming another party, which was to inherit Federalist conceptions of statesmanship.

[32] The word is repeated in the original.

[33] Madison MSS. Library of Congress.

[34] However, in the Second Congress he fought Hamilton's recommendations for "an immediate general assumption." Annals, 2nd Cong., 1st Sess., 495.

[35] Annals, First Congress, vol. ii, 1971.

The most important matters, however, engaging the attention of this session of Congress were the excise and the National Bank. On December 13, 1790, Hamilton sent to Congress two reports, one recommending an excise on the manufacture of spirituous liquors, the other recommending the establishment of a National Bank. On the first bill Giles seemed much more vacillating than was to be characteristic of him; he had as yet not found himself. At first seeming to favor the excise on the ground of necessity, he soon urged the recommitment of the bill in order that its defects might be remedied. He favored a motion to limit the period of the excise and declared he was afraid there was too much sympathy in the House with public creditors. Finally he swung over into oppositon to the measure,[36] and had committed himself against the policies of Alexander Hamilton. However, the bill became a law on March 3, 1791. Southern members resisted its passage as long as possible; it would, they declared, be a heavier burden on the south than on the other sections of the country. North Carolina, they claimed, would have to pay ten times as much as Connecticut, and Virginia and Georgia would suffer in like degree.

At the same time that the excise bill was under discussion, the Bank bill was also before Congress. Against it the Anti-Federalists threw their strength. Admitting that the proposed bank would do all that Hamilton claimed for it—increase the "active capital," afford the Federal Government greater facilities in the management of its financial operations, and provide a medium of exchange for the public, one must concede that there were grave dangers to be expected from its establishment.[37] A combination of government and individuals in a large financial corporation, however expedient otherwise, was certainly open to serious abuses. Large opportunities were offered for the promotion of the interests of legislators of a financial turn of mind or their friends, and the concentration of the moneyed resources of the country at one center would not improbably be a drain on the resources of remote districts. There might,

[36] Annals of Congress, First Cong., 3rd Sess., 1851, 1875, 1881, 1883, 1884, 1971. Madison voted for it.

[37] Schouler, History of the United States, vol. i, 175.

from the point of view of a Virginia farmer, be unlimited opportunity for the northern interests to expand at the expense of their less shrewd and less favorably situated brethern of the south. New York and New England, the protégés of Hamilton's various financial enterprises, naturally favored the Bank bill; the farmers of the South who had already suffered from the scheming beneficiaries of these policies could but view this project with alarm.[38] Then, too, banks at the South were an unusual spectacle and in the West, the ally of the South, they were known only by reputation. Southern and western people felt no need for financial institutions, and least of all for an institution which enjoyed special privileges and could maintain a monopoly. When they did discover a use for banks, they wished local banks, representing their own interests, responding to their control,[39] and not subject to the restraining influence of a great moneyed corporation. To his dying day Giles viewed with suspicion any kind of bank and looked with bitter hostility on a central financial corporation.[40] The opposition

[38] See attitude of Patrick Henry who controlled Virginia at this time. He saw in Hamilton's policies a subordination of southern to northern interests. Henry's Henry, ii, 460.

See an interesting article by C. A. Beard on "Economic Origins of Jeffersonian Democracy" in American Historical Review, XIX, 282.

Beard says (p. 294) "The major portion [of Virginia certificates funded] had been bought up by brokers and speculators in Virginia towns and in Baltimore, New York, Philadelphia, and other financial centers". Virginians received in 1795 from the Federal Government $62,300, while citizens of Massachusetts received $309,500.

[39] There is no careful study of banking in Virginia. The only book on the subject is "A History of Banks and Banking Prior to the Civil War" by William L. Royall, N. Y. and Washington, 1907. Prior to 1804, according to Royall, there was no banking in Virginia carried on in the modern way. There were, as there had been in Colonial and Revolutionary days, unchartered banks. In 1792, with apologetic preambles, the Bank of Alexandria (Act of Nov. 23) and the Bank of Richmond (Act of Dec. 23) were chartered. The latter does not seem to have been established or must have been short-lived, and the first chartered bank to be permanently established in Richmond was the Bank of Virginia chartered January 30, 1804. See Christian, W. A.—"Richmond, her Past, Present, and Future" 59. However, by act of December 10, 1795, the Bank of the United States was authorized to establish branches in Virginia.

[40] Giles was made director of the Bank of Virginia. He soon retired. This bank was presided over by his closest friend, A. B. Venable.

of the Anti-Federalists was, therefore, not a mere artificial and partisan opposition designed for factional advantage or based on mere political theory; it was perfectly conscientious, perfectly logical, and perfectly in harmony with the desires of their constituents. The great difficulty was their inability to devise a system which could be offered as an adequate substitute for the banking system.

On the subject of the Bank, Giles spoke February 7, 1791. As the Bank was to be the theme of many of his subsequent speeches and essays, an examination of his views on this occasion is desirable. He attacked both the constitutionality of the measure and its expediency. It was, he said, authorized neither directly nor indirectly by the Constitution. Inference from no specific clause would allow it, nor would a proper interpretation of the preamble, or the general welfare, or the elastic clause allow it. The word, "necessary," as it appears in the eighteenth of the clauses enumerating the powers of Congress, meant only "without which the end could not be produced." It was true that the context of the Constitution included all the ends of government, but the execution of these purposes was distributed between state and nation. This was, he thought, a Federal, not a consolidated government. Constitutionality did not grow out of "incidentality to the mere creation and existence of government," nor did it grow out of expediency. Such doctrines, if accepted, he feared would have evil effects on the position of the states, for "their dignity and consequence will not only be prostrated by it, but their very existence radically subverted." If it were claimed that Congress had been in the habit of doing unconstitutional things, it was high time to make a correction. This act, he declared, was an unprovoked advance in the scramble for authority between the United States and the individual states. A continuance in such a policy would increase the jealousies of the people and would result either in the abandonment of the policy or in a radical change in the government.[41]

[41] Annals of Congress, under date, Feb. 7, 1791.

The Bank was established and the controversies shifted to other policies. Meanwhile, however, Jefferson had begun to organize his followers into a party. It was not sufficient to fight against individual measures proposed by Hamilton. The men who were generally found on the side opposite the financial dictator must be fused into a body, with one soul and one spirit, ready to combat whatever purposes the Secretary of Treasury might choose to assert, and looking ultimately to the time when they themselves should be able to dictate the policies of government and fill the offices. To weld together the forces of opposition was a work for which the Secretary of State was wonderfully endowed. Possessed of tact and patience, of magnetism and kindly tolerance, of unusual facility in smoothing away party differences and jealousies, and withal endowed with genuine conviction and devotion to high idealism, Jefferson was the one man to found a great national party. Ignorant of the complex and effective party machinery and weapons of our own day, by skillful use of tongue and pen in the quietest of ways he brought others to do his will and to fight the men and the evils he hated. In Virginia he had effectively marshalled his upcountry farmers, his Baptists and Presbyterians, and abolished entails and primogeniture and established freedom of religion. Piedmont and western Virginia in 1776 was but a prototype of the Piedmont and Transmontane regions of the United States in 1791. Why not bind the rest of the nation together to fight the battle of Democracy, as the west of Virginia had been bound together to fight in a smaller field that same battle? The same men who hated primogeniture and entails and wished absolute equality for all religious sects, suffered when northern and eastern speculators cheated them out of their securities, when excises were placed on their liquor, and when a great moneyed corporaton was created to control credit. And just as they had hated the councellors and bigwigs who, assembled at state capitols, refused to grant representation fair to the western section, so they hated executive influence in the nation—and Presidential levees. Seething with discontent over one measure after another proposed by the new government, which many of them

had wished never to see established, they were ready to flock to the standard of one who believed as they did and who knew how to battle for their rights. The basis of Jefferson's new party was the discontent of men who had already fought against political and religious monopoly at home—who now thought they felt the choking hand of political and financial monopoly strangling the nation. Jefferson found ready to help in the labor of making this discontent effective for the accomplishment of practical results James Madison, Albert Gallatin, Nathaniel Macon, and by no means least, William B. Giles—the best practical politician of them all.[42] To the cause of Jefferson, Giles gave a resourcefulness and boldness unsurpassed by the greatest of them, and a talent for effective speech unequalled by any other man in the Congress of his day.

Giles's first experience in Congress was evidently satisfactory to his constituents, for he returned without difficulty to the Second Congress. On his return to Congress in October, he launched into the debates with vigor, fearlessness and at times, ferocity. The bitter tongue and biting words of William B. Giles have often been described by historians, particularly by those residing in the northeastern corner of the country. Few of the men, it must be admitted, whose oratory has resounded in legislative halls have so frequently and unreservedly spoken exactly what they thought with such entire disregard of consequences or of the feelings of opponents. Few men have made more bitter enemies or had less charity shown them by critics and historical writers than this same outspoken Virginia statesman. Washington, Hamilton, Monroe, Gallatin, Madison, Henry Clay, and John Quincy Adams among the greater characters in American history were at one time or another the recipients of his taunts and denunciations. Before the Second Congress had adjourned he had found subjects and characters worthy of his forceful vocabulary. But in studying the career of this vigorous, erratic, and often uncharitable debater, one must be ever on guard not to be misled by his

[42] This is the opinion of Timothy Pickering given in a letter to John Marshall, January 24, 1826. Mass. Hist. Society, Pickering MSS.

manner of speech. He was not always wrong when his tongue was sharp. It often was his hatred of what he considered fraud and his devotion to what he considered the fundamental rights of the states and the people that made him overzealous in their cause. In this character he was to figure in the session now to begin.

Congress opened October 24, 1791, and Giles was present at the beginning. The chief party conflict of the first session was the struggle over the reapportionment of representation. The Constitution had arbitrarily fixed the representation for the time being as was necessary in the absence of a census of the population. But a census was to be taken within three years after the first meeting of Congress, and thereafter representation should not exceed one for every thirty thousand of population.[43] Such a census had been taken in 1790, and now the problem of apportionment gave trouble; the followers of Jefferson in the House desired to enlarge their body in order to improve the condition of their party and to increase the influence of the House as compared with other departments of government. They favored, therefore, an apportionment on the basis of 30,000, a ratio which would permit a House of 113 members as against the present house of sixty-nine, and would produce a result favorable to the South.[44] On such a question there could be but one position for Giles; on November 14 he delivered a speech in favor of one representative for every thirty thousand people, and returned to the same subject on April 9, 1792. To him the adoption of a ratio of apportionment was a vital matter. Involved in it was nothing less than the fight of the people against plutocracy and of pure republicanism against its present betrayers. "The revolutions in property in this country," he asserted, "have created a prodigious inequality of circumstances. Government has contributed to this inequality; the Bank of the United States is a most important machine in promoting the objects of this moneyed interest. The Bank will be the most powerful engine to corrupt this House. Some of

[43] The United States Constitution, Art. I, sect. 2, par. 3.

[44] Schouler, i, 206.

the members are directors of this institution;[45] and it will only be by increasing the representation that an adequate barrier can be opposed to this moneyed interest." Also he declared: "The strong executive of this Government ought to be balanced by a full representation in this House."[46] On April 9, he asserted that the natural tendency of all representative government was, through the inequalities in the distribution of wealth, to move from republicanism to monarchy; and the government through the manipulation of the public debt, the assumption of state debts; the creation of a sinking fund had stimulated "this growing inequality in the distribution of wealth." He openly espoused the cause of the "agricultural or equalizing interest." He contended that it was a question whether the "simplicity, chastity, and purity" of republicanism be preserved or whether the Government would "prostitute herself to the venal and borrowed artifices and corruptions of a stale and pampered monarchy," and that "whatever his own opinions or suspicions may be respecting the tendency of the present administration," he hoped that increased representation "will favor an effective resistance to the pressure of the whole vices of the administration, and may yet establish the government upon a broad, permanent, and republican basis." In true Jeffersonian fashion, studying the desires of the people, he endeavored to show that they expected the ratio of one to 30,000. In answer to the charge that such a ratio would work a disadvantage to some of the states, he pointed out that representation in the Senate had been to their advantage. On account of the manner of representation in the Senate a minority of constituents might give the law to the majority; this had happened in almost every important measure.[47] How just was this argument made by Giles may be seen by reference to the census of 1790 wherein Virginia is shown to have a population of 747,610, nearly twice as large as that of any other state and twelve times as large as the state of Delaware, and yet each had two votes in the upper house. A bill passed the House in the form the

[45] This was, of course, true.

[46] Annals, Second Cong., 1st Sess., 178-179. (November 14, 1791).

[47] Annals, Second Cong., 1st Sess., 543-548.

Republicans desired—the Senate changed the ratio to that of 1 to 33,000. On a disagreement of the two houses the bill was lost. A second bill was vetoed by the President—his first exercise of that power—and a third bill providing a ratio of 1 to 33,000 became law.[48] According to this law the membership of the House became 105 instead of 113, as the House desired, and the representation of Virginia was increased from ten to nineteen.

Another bill became law during this session, the discussion of which gave Giles an opportunity to display his customary antipathy to favoritism by government. This bill was one for the encouragement of the bank and cod fisheries, proposing to substitute for the drawback on salt used in canning fish for exportation a bounty on ships engaged in the fisheries. Giles, though not inclined to push his opposition too far, found difficulty in seeing the constitutionality of bounties. Besides he considered them economically bad and very truly said if an occupation was productive it needed no bounty, and that giving it an artificial advantage lessened the wealth of the country. In the minds of those who have seen the experience which the country has had since the Civil War and now view the present uprising against special privileges to particular industries, the following sentence, though a little strong, must strike a responsive chord: "Bounties," he says, "in all countries and at all times, have been the effect of favoritism; they have only served to direct the current of industry from its natural channel, into one less advantageous or productive; and in fact, they are nothing more than governmental *thefts* committed upon the rights of one part of the community, and an *unmerited* governmental *munificence* to the other. In this country, and under this Government, they present an aspect *peculiarly dreadful* and *deformed*."[49]

If Giles was opposed to bounties and privileges for others, he wished none for himself. When an act relating to the postal system of the country was under consideration, he opposed

[48] Schouler, i, 206.

[49] Annals, Second Cong., 1st Session, 397-400. Feb. 8, 1792.

granting the franking privilege to members of Congress. He saw in it "an exemption from a pecuniary obligation"—and the principle he considered as "dangerous." Congressmen were not to be subject to the same duty that was imposed on their constituents, and this was what struck him as "highly dangerous."[50]

The climax of the attacks on Hamilton and his policies came in the second session of the Second Congress, and Giles led the fight. In a discussion of the question whether the Secretary of the Treasury should be asked to frame a plan for the reduction of the debt, he declared "some of the measures recommended by the Secretary of the Treasury discovered a princely ignorance of the country, for the wants and wishes of one part had been sacrificed to the interest of the other."[51] When a bill was presented in accordance with the recommendation of Hamilton, providing for the negotiation of a new loan for the payment of the debt of $2,000,000 due by the Government to the Bank of the United States, Giles proclaimed himself averse to increasing our debt by any new loans and advocated the sale of the government stock in the bank in order to raise the money.[52] The result of the opposition was the failure of the bill and the substitution of one providing for only $200,000 for the installment of the debt then due.[53] But the most conspicuous part played by the Virginia member was his presentation of the two famous sets of resolutions of January and February 1793 directly and formally attacking the Secretary's conduct of the business of his department. It was doubtless an effort to drive Hamilton from the cabinet.[54] On December 27, 1792, while the bill was under consideration authorizing the President to borrow $2,000,000 for the reimbursement of the Bank of the United States, Giles had offered a resolution calling on the President to send to the House a statement in regard to the loans made by his authority and the manner in which they had

[50] Annals, 298.
[51] Annals, Second Cong., 2nd Sess., 706.
[52] Ibid, 753.
[53] Act, March 2, 1793.
[54] Bassett, Federalist System, 104.

been expended.[55] In answer to this and other resolutions Hamilton had sent down a report. Not satisfied with it Giles came forward on January 23 with a series of five resolutions.[56] Copies of the papers authorizing certain loans were called for, the names of persons by whom and to whom the French, Spanish, and Dutch debts had been paid were asked with dates of drafts and payments, a statement of semimonthly balances between the United States and the Bank down to the end of 1792 was demanded, and an account of the sinking fund and the balance of unapplied revenues through 1792 was required. In explanation of the presentation of these resolutions, he announced what everybody certainly knew by this time that "impressions resulting from my inquiries into this subject, have been made upon my mind, by no means favorable to the arrangements made by the gentleman at the head of the Treasury department." Congress had been legislating for some years "without competent official knowledge of the state of the Treasury," and despite this "have engaged in the most important fiscal arrangements." He stood in the attitude of an inquirer and was open to conviction.[57]

These resolutions of January 23, 1793, are now generally attributed to the suggestion of Jefferson and to the pen of Madison, and Giles is represented as their tool in presenting them. It is doubtless true that Jefferson was behind them and Madison made a draft of them. But the assumption that Giles was a mere automaton responding to the pull of these men or of any others cannot be held for a moment by any man who has studied the career of the very able and self-confident politician

[55] Annals, Second Cong., 2nd Sess., 761. A succession of resolutions of inquiry were offered—one by Parker of Virginia on December 24, directing the Secretary of the Treasury "to lay before the House an account of the application of the moneys borrowed in Antwerp and Amsterdam for the United States, during the present year;" on Dec. 27, that referred to above; on Dec. 31, directing the Secretary of the Treasury and the Secretary of War to lay before the House lists of persons employed by them with salaries of each officer.

[56] Annals of Congress.

[57] Annals, Second Cong., 2nd Sess., 840.

who introduced these resolutions.[58] Giles was on intimate terms with Jefferson and Madison and seemed to have one element of superiority over either, and that was an unflinching courage. The resolutions and those that followed were, as we shall see, disastrous for the proposers. Giles deserves to share the blame equally with Jefferson and Madison for a mistaken and untimely partisan move.

In answer to these resolutions came three letters[59] from Hamilton purporting to answer the questions asked and justifying his conduct. Not confining himself, however, to the presentation of information he imprudently gave rein to his temper, declaring the resolutions "were not moved without a pretty copious display of the reasons on which they were founded", which "were of a nature to excite attention, to beget alarm, to inspire doubts." He claimed that he had acted for the good of the country but admitted a technical violation of the laws authorizing the loans. He thought, however, that to have acted otherwise than he did would have been at the sacrifice of public advantage.

Giles returned to the attack on February 27 with a series of nine resolutions drawing from the reports of the Secretary inferences unfavorable to that official.[60] The first declares that it is essential to proper administration that laws making specific appropriation be strictly obeyed; the second that a violation

[58] Ford, P. L., *Nation,* Sept. 5, 1895; Hamilton, Republic, v, 181, 204; Schouler, United States, i, 216-220; McMaster, United States, ii, 115-119; Gay, Madison, 197-199; Lodge, Works of Hamilton, ii, 342, note, where Giles is called "tool" of Jefferson and Madison.

[59] Reports dated Feb. 4, Feb. 13, Feb. 14.

[60] A draft of these resolutions is found in Ford's *Writings of Jefferson,* vi, 168; they differ in certain important details from the resolutions as actually presented by Giles, Feb. 27. See Annals under dates given in the text. But the inference drawn by Ford as to Giles's inability to draw them is ludicrous. He says "Giles has been more often abused than praised, but neither critics nor apologists have ever questioned if he had ability to frame what he moved, or have searched for a more likely author of them. A rough draft of the resolutions in the handwriting of Thomas Jefferson furnishes a suggestion too strong to be disregarded." Giles during his life drew hundreds of documents requiring more ability than did these.

Hamilton in Republic v, 204 (note) says Giles told Rufus King that Madison wrote these resolutions. However, Hamilton gives no authority.

of such a law is a violation of the constitutional provision that no money should be drawn from the Treasury except by Congressional appropriation. The third declares that Hamilton had violated a law authorizing a loan for the payment of the foreign debt by using a portion of it in the payment of the interest on the loan itself and by drawing a portion of it into this country without instructions from the President. The fourth asserted he had exceeded the instructions of the President in making the loans. The other resolutions declared that the Secretary failed to give proper information to Congress of drafts of money from abroad, and in so doing omitted an essential duty of his office, that he had wrongfully negotiated a loan with the Bank of the United States when there was a greater sum in the Bank to the Credit of the Government, that the Secretary had been guilty of indecorum in judging of the motives of the House in calling for information. A final resolution ordered a copy of these resolutions to be transmitted to the President. A debate on these propositions occurred the next day. The first fight was on the manner of their consideration. Giles desired a reference to the Committee of the whole House. The Federalists opposed this for lack of time and denounced the proceeding as "unhandsome" and the mode "tyrannical."[61] Finally all but the first and second resolutions which dealt with abstract questions, and the ninth which proposed to send the resolutions to the President were referred to the Committee of the whole House. Some of their leading defenders were Giles, Madison, and Findley of Pennsylvania.

The speech of Giles made on the first day of the debate is not given in the Annals.[62] Speakers defending Hamilton were Ames of Massachusetts, who later was to immortalize himself by his defence of the Jay Treaty, and two Federalist members from South Carolina, Barnwell and William Smith.[63] Smith was an able man, but he did not on occasion, however, think it unworthy to deliver verbatim a speech written by Alexander Hamilton, and, according to Jefferson, he had made a fortune

[61] Speech of Vans Murray.

[62] It is referred to next day.

[63] Ames and Smith were both directors of the Bank, Schouler, i, 198.

by means of "tips" from Hamilton during the debates on the assumption of state debts.[64] On March 1, the votes were taken; overwhelming defeat met each resolution. When the third had been defeated, a desire was expressed to withdraw the others. This request was not allowed, and so the painful process continued, becoming more and more painful until the eighth resolution was rejected by a vote of 34 to 7. Only five men in the House voted for all the resolutions. Counting every man who voted for any one of them, there were only seventeen supporters of the proceedings and seven of these were from Virginia.[65] These resolutions were popular in Gile's own state; meetings held at the time attest the sympathy there felt for the attack made on the Secretary. Virginia, even good Federalists could not fail to observe, was seething with discontent. But the triumph of Hamilton was complete—a triumph thrown into the faces of his assailants when at the next session, on the ground that insufficient time had been given for the investigation, he asked for a repetition of the inquiry. The attack of Giles was unfortunate and the discomfiture of the assailants undoubted. It is also no doubt true that the assault was partly due to other motives besides patriotic devotion to the interests of the country. It was ill-timed and the fight was not well managed. But to one

[64] He bought up a quantity of state notes and told his friends that money could be made by speculation in them. Phillips in Amer. Hist. Review, xiv, 732, note.

[65] Jefferson comments on the result, March 3, 1793, in a letter to Thomas Mann Randolph, Writings (Ford) vi, 194—"Mr. Giles and one or two others were sanguine enough to believe that the palpableness of the truths rendered a negative of them impossible, and therefore forced them on. Others contemplating the character of the present house, one third of which is understood to be made up of bank directors and stock jobbers who would be voting on the case of their chief: and another third of persons blindly devoted to that party, of persons comprehending them but too indulgent to pass a vote of censure, foresaw that the resolutions would be negatived by a majority of two to one. Still they thought that the negative of palpable truth would be of service, as it would let the public see how desperate and abandoned were the hands in which their interests were placed. The vote turned out to be what was expected, not more than 3 or 4 varying from what had been conceived of them." Jefferson thought the decision would be revised at the next session. Note that Jefferson says these resolutions were "prepared" by Giles and intimates that Giles against his (Jefferson's) better judgment brought them forward.

who will view the matter impartially, the conduct of the Secretary was not such as to allay suspicion. He did not make "orderly and serviceable records of the progress and condition of the debt;" "he was impatient of restraints and preferred to make reports in his own way and season;"[66] in carrying out his plans he did violate the letter of the law; he had been irritable in his answers to Congress; confident of his own devotion to the public welfare and seeing no reason for paying too close heed to the representatives of the people, for whom he had little respect, he had too little regard for their opinion; there was a close and unsavory connection between him and the "interests;" he was not averse at times to using his influence and his knowledge of public finance for the advantage of his friends;[67] and men representing the farmers of the South, victims already of his beneficiaries, were not unnaturally distrustful of his actions. However unwise at times the particular attacks made on Hamilton, and however unfounded some of the suspicions against his integrity, nevertheless the hostility of Jefferson, Madison, Giles, and the Republicans was healthful. Careless of the rights of the states, distrustful of our form of government and of the people whom it recoginized as sovereign, admiring too greatly the British Constitution to be perfectly obedient to his own, too self-confident, too little regardful of the means by which a righteous end was to be accomplished, seeing too plainly the advantage of the favor of the rich without divining the dangers of too close a reliance on the wealthy,[68] Hamilton stood for conservation versus idealism, business versus human rights, and for the commercial centers versus rural communities. He had built up a congressional party composed of those who profited by his financial schemes and who were not unwilling to legislate in their own interest. The fight against him, though sometimes inopportune, was at bottom the never ending fight of the people and the interests.

[66] Dewey, Financial History of the United States, 115-116.

[67] Schouler, i, 217-218. Beard in "An Economic Interpretation of the Constitution of the United States", attempts to exonerate Hamilton (100-114). But the admissions of Mr. Beard and the facts given by him seem to me to lead to an opposite conclusion from that drawn by him.

[68] See the characterization of Schouler cited above.

In one other investigation during this second Congress, Giles played an important part. That was the investigation of the causes of the defeat of St. Clair by the Indians. In the first session Giles had offered the resolution for the investigation and had been placed on the committee though not as chairman.[69] The first report exonerated St. Clair entirely, and threw the blame on Knox and Hamilton, Secretaries of War and Treasury respectively. Concluding with a statement of the principal causes of the failure of the expedition, the Committee found them in the delay with which materials were furnished, the "mismanagement" of the Quartermaster's and Contractor's Departments, and in the "lateness of the season at which the expedition was undertaken." They "conceive it but justice to the Commander in Chief, to say, that in their opinion, the failure of the late expedition can in no respect be imputed to his conduct, either at anytime before or during the action; but that as his conduct in all preparatory arrangements, was marked with peculiar ability and zeal, so his conduct during the action furnished strong testimony of his coolness and intrepidity." The report was severely criticized and referred again to the committee of which Giles was now made chairman. An ambiguous supplementary report made such changes as to calm the indignation of the friends of Knox and Hamilton.[70]

During the spring and summer after the adjournment of Congress, Giles visited a few days at a time at that Mecca of Virginia Republicanism, Port Royal, the home of John Taylor of Caroline, recently appointed successor to Richard Henry Lee in the Senate of the United States. With Giles were Hawkins, Senator from North Carolina, Nathaniel Macon, and on his second visit, his closest friend, Venable of Virginia.[71] Taylor was a strict constructionist of the deepest dye, who had opposed Hamilton's financial schemes, and favored the resolutions of investigation and censure.

[69] Annals, Second Cong., 1st Sess., 490-494.

[70] State Papers, Military Affairs, i, 36-38 and 41-44.

[71] See Letters of Taylor to Madison. Branch Historical Papers of Randolph-Macon College, 1908, 254-258. The same issue has a valuable sketch of Taylor's career by Professor W. E. Dodd.

The opening of the Third Congress, December 2, found Giles in his seat prepared for action. The questions at issue were to be different from those of the preceding two Congresses. No opportunity, it is true, to harass the arch-enemy, Alexander Hamilton, was to be neglected even though the great work of the Secretary of the Treasury had been done and the current of thought was turning from domestic mainly to foreign relations. But the difficulty we now found in adopting a firm national policy was to be discovered in the system which Hamilton had built up. The French Revolution had advanced headlong until the King had been beheaded, a republic declared, and a war with England assumed. The French remembered their treaty of alliance made with the United States in 1778 when we were at war with the same power with which they were now at war—a treaty which had not been abrogated—and they forgot neither our debt to them nor our beautiful expressions on liberty when we were conducting our revolution. Genêt, the French Minister, loaded with commissions for privateers, eager to take advantage of our factional contests and democratic enthusiasm, landed at Charleston and made a triumphal advance to Philadelphia only to be met by a repudiation of the treaty of 1778 as interpreted by the French, a refusal to pay money before it was due, a declaration of neutrality in the conflict, and finally a rejection of the Minister himself. England, on the other hand, had only tardily sent us a minister; had captured our seamen, had violated the neutrality of our ships, and had rejected proposals of our government for a treaty of commerce. In the discussions that were to take place in Congress on the subject of our international relations, Giles was to avow openly his friendship with France, was to favor all means of resisting England and to lament the decline of national spirit, and was to lose no opportunity to sally forth against the character and policies of the administration. The President's message did not attempt to conceal the evil conduct of the British Government and a report from Jefferson afforded detailed information of the restrictions on our commerce and

made recommendations of retaliatory duties against such nations as treated us unfairly.[72]

To carry out the intention of these recommendations, Madison came forward on January 3, 1794 with resolutions providing for increased duties against countries having no commercial treaty with us.[73] Against the adoption of these resolutions appeared William Smith of South Carolina,[74] Ames, Tracy, Vans Murray, Hillhouse, and the rest of the prominent Federalists; for them spoke Samuel Smith of Maryland, Findley and Smilie of Pennsylvania, and the Virginians. Giles spoke early in the debate, before new revelations of British orders had lashed the anti-British feeling into fury.[75] Defending Jefferson's report, denouncing Great Britain, praising France, he at the same time seized occasion to strike at Hamilton and to point out again the connection of the moneyed interest with the Government. "Some say," he declares, "that the adoption of this policy of retaliation will mean a tax on our constituents, others that it will mean a diminution of our revenue." But "this," he continued, "was not the language of America at the time of the Declaration of Independence. Whence, then this change of American sentiment? Has America less ability than she then had? Is she less prepared for a national trial than she then was? This cannot be pretended. There has been, it is true, one great change in the political situation. America has now a funded debt; she had no funded debt at those glorious epochs. May not this change of sentiment therefore, be looked for in the change of situation in this respect? May it not be looked for in the imitative, sympathetic organization of our funds with the British funds? May it not be looked for in the indiscriminate participation of citizens and foreigners in the emoluments of the funds? May it not be looked for in the wishes of some to assimilate the Government

[72] Report dated December 16, made in pursuance of resolutions of the House, Feb. 23, 1791.

[73] Text in Annals, Third Cong., 1st Sess., 155. Petition from Virginia in favor of the resolutions, Annals, 484.

[74] In a speech written by Hamilton, Hamilton, J. C., Republic, v, 450.

[75] Schouler, i, 282.

of the United States to that of Great Britain, or at least in the wishes of some for a more intimate connection?

"If these causes exist, it is not difficult to see that the interests of the few who receive and disburse the public contributions, are more respected than the interests of the great majority of the society who furnish the contributions. It is not difficult to see that the Government, instead of legislating for a few millions, is legislating for a few thousands and that the sacredness of their rights is the great obstacle to a great *national exertion.*"[76] This language was the language of Giles's constituents as well as of himself—they hated Great Britain, would not have objected to a war with her. For France they had a corresponding sympathy.[77]

In addition to the other reasons for resentment against Great Britain, another appeared in the renewed depredations on our commerce by Algerian corsairs released from the Mediterranean through a truce made with Algiers by the British Consul General.[78] A bill for the creation of an American navy, sufficient to cope with the dangers to which our commerce was exposed by this new alarm, was with some inconsistency opposed by the erratic Virginia statesman. He placed the blame for the Algerian difficulties on Great Britain, when he declared, "the cheapest mode of getting peace will certainly be by embracing commercial regulations." He forgot the highly patriotic words he had uttered on January 23, and was innocent of what the future was to bring forth, when he now objected to the establishment of a navy on the ground that it would facilitate the enlargement of expense and taxation, "The system

[76] Annals, Third Cong., 1st Sess., 274-290.

[77] See letter of J. G. Jefferson to Thomas Jefferson, dated Amelia (Giles's home county), March 22, 1794:—"Mr. Madison's resolutions have rendered him, in this part of the country, more popular than any measure he could have taken. I believe the people in this and the adjoining counties might be easily reconciled to a war with Great Britain; and, so great is their sympathy for the French, that I have heard some of the leading characters declare, that, even if there was a rupture between France and their own country, that they would refuse to bear arms." Quoted in J. C. Hamilton's Republic, v, 520. Jefferson, April 3, to Madison wrote that the people of Virginia were ready for war. Randall, ii, 227.

[78] Schouler, i, 281.

of governing by debts he conceived the most refined system of tyranny . . . devised by politicians to succeed the old system of feudal tenures." "He should value his liberty at a lower price than he did now, if the policy of a permanent naval establishment should obtain in the United States."[79] The bill, however, was passed and the beginning of the navy of the United States provided for.

Excitement grew. Extreme measures against England were considered by Republicans; Federalists talked disunion,[80] Dayton of New Jersey not hitherto known for radical positions came forward on March 27 with resolutions providing for the sequestration of all debts due by American citizens to British creditors as a pledge of indemnification to Americans suffering for British spoliations. The following day Giles arose in the defense of these resolutions. Reprisal was within our power, he thought; all other means of redress without our power. "In such a state of things reprisal is a right—reprisal is a duty." Coming to the defence of France, he was "extremely hurt that the conduct of France should be unnecessarily and unopportunley arraigned in that (this) House;" "why," he asked, "irritate the only nation in the world who could afford them (the U. S.) any substantial assistance?" The conduct of France was, according to him, a result of necessity and would probably be explained.[81] Besides we had sufficient means of indemnification against France—the debt we owed her. He could not sit down without some remarks on our past policy. What had been the effect of neutrality? It had produced instead of peace new aggressions. But even if this conduct had been heretofore wise and pacific, experience had taught us that it was no longer so; nothing could be expected from the injustice, the honor, or the moderation of a court, which had proved itself equally a stranger to them all; but, before such a

[79] For these quotations see Annals, Third Cong., 1st Sess., 436, 447, 486, 492, 497 (Feb. 6 and Mar. 10).

[80] See "A Confidential Memorandum", hitherto unpublished, written by John Taylor of Caroline, Senator from Virginia, for James Madison. Edited with an introduction by Gaillard Hunt, Washington, 1905.

[81] McMaster, ii, 168, says the "French were equally culpable."

tribunal, acquiescence would beget injuries, injuries would beget insults, and insults would beget contempt and degradation, and war.[82] Giles also voted for the resolutions of Mr. Clark of New Jersey providing that until proper restitution should be made to American citizens and the western posts should be given up "all commercial intercourse between citizens of the United States and the subjects of the King of Great Britain, so far as the same respects articles of the growth or manufacture of Great Britain or Ireland, shall be prohibited.[83] The resolutions much amended passed the House only to be rejected by the Senate by the casting vote of the Vice-President.

Such measures as proposed by Dayton and Clark would have meant war. This the administration did not desire, whatever might be the feeling of the country. Eastern Federalists of the type of Cabot, Strong, Ellsworth, and King agreed on a mission to England, and, despite the utter inappropriateness of selecting the detested leader of a great party whose work could not command the respect of a large section of people, and of sending abroad at this period the recognized friend of Great Britain and the enemy of France, chose as the envoy, Hamilton who was soon to retire into private life.[84] Protests from Republicans poured in upon Washington[85] and forced him, if he had ever had the serious intention of proposing the name of the Secretary of the Treasury,[86] to give up the intention and substitute the Chief Justice of the United States. Less obnoxious than would have been the appointment of Hamilton, the selection of the Chief Justice was not without serious objection. That the head of our greatest court could be allowed an extended absence in a foreign country might be only a testimony to the paucity of litigation in those unsophisticated days; but that the same hand should write our treaties which might, before the ink was dry, be compelled to apply them in

[82] Annals, 544, 547.

[83] Annals, April 7 (introduced), April 21 (passed).

[84] Schouler, i, 284.

[85] McMaster, ii, 187.

[86] Lodge, Washington, i, 177 says he was first choice and Hamilton withdrew at the outcry. But see Bassett, Fed. System, 124 and King's King i, 518.

adjudication was certainly not in accord with American ideas of the separation of the legislative and judiciary departments. The nomination was confirmed by the Senate on the nineteenth of April. The House had nothing to do with the nomination; but that did not prevent expressions of opinion—and Giles did not delay announcing his disgust at the procedure. On the ninth of May he gave his opinion of the mission. He "had heard much about negotiation. This was the universal cry of a certain description of people. An envoy had been appointed to the Court of London to negotiate, and this measure seemed to imply an appeal to the generosity and magnanimity of the British nation"; but it seemed to him "a perfect burlesque of common sense to draw any conclusions of British generosity".[87]

Having renewed his touch with the pure principles of Republicanism by frequent visits to Jefferson during the summer of 1794,[88] Giles was in Congress again on November 7, 1794. The most interesting subject on which he spoke at this session was the Democratic societies which had been active during the summer. One such society in Virginia had been particularly violent—the Democratic Society of Wythe County. Meeting on the fourth of July at the Court House, they denounced the late Congress for cowardliness in the presence of insults and injuries and arrayed themselves against the despotism involved in the union of executive, legislative, and judicial powers in the hands of the envoy to Great Britain, the Chief Justice of the United States.[89] "Shall we Americans," they ask, "who have kindled the spark of liberty, stand aloof and see it extinguished, when burning a bright flame in France, which hath caught it from us! If a despot prevails, we must have a despot like the rest of the nations. If all tyrants unite against free people, should not all free people unite against tyrants? Yes, let us unite with France and stand or fall together." They also

[87] Annals, May 9, 1794 (669).

[88] The Life of Thomas Jefferson by George Tucker, London, 1837, 2 vols., i, 470.

[89] Peter Porcupine—A little Plain English Addressed to the People of the United States on the Treaty. (Phila., 1795) 104-105. McMaster, ii, 177, American Daily Advertiser, August 2, 1794.

proposed "so to amend the Constitution as to incapacitate any man to serve as President for more than eight years successively." Societies throughout the country were equally as radical. When the President delivered his address at the opening of Congress, telling the story of the famous Whiskey Rebellion in Pennsylvania and the measures adopted during the recess of Congress for the suppression of the movement, he reproached certain "combinations of men" for the manner in which they had conducted themselves.[90] A motion to condemn these societies—self-created societies as they were called—was offered in the House, during the consideration of the reply to be made the President, and Giles took upon himself the task of opposing such a measure.[91] Every individual in the United States, according to him, was a member of a self-created society. Religious organizations, for instance, deserved the name, "self-created" society. If the intention was to censure Democratic societies, why not, he asked, do the same by the Cincinnati Society? Congress had no right to attempt to check public opinion; if these societies violated the law then bring the charge against them. If something must be censured, why not censure landjobbing, paper money, etc. Denouncing them in Congress could do no good—it would give these societies more importance than they deserved. He had nothing to do with them and was not even acquainted with the persons concerned with their original formation. Returning to the contest, he found it necessary to enter into his own defence. "He had been," he said, "an object of calumny, misrepresentation and abuse." He would go on and do his duty, preserve dignity of conduct, and "treat abuse with silent contempt." Accused of continued criticisms of the measures of the Government, he replied: "Pay off the public debt, and I assure you that my

[90] Richardson, Messages and Papers, I, 166. Washington was much alarmed by the Democratic societies. He said if they were not counteracted or did not fall into disesteem, "they would shake the government to its foundation." Letter to Henry Lee, August 26, 1794. Writings of Washington, (Ford) xii, 455.

[91] The expression "self-created societies" was used by the Senate in their answer to the President, Nov. 24, 1794. Annals, Third Cong., 2nd Sess., 899-901. Again 915-919.

censures of Government shall be at an end." Others followed Giles in the defence of the societies, and in the end killed the clause of censure which the enemies of the societies desired placed in the answer. But neither Giles nor anyone else could preserve them longer. Unable to stand the reproof of Washington and the end of the Terror in France, they lost their influence and died.

The only other business in which Giles took much interest during the Third Congress was an amendment offered by himself to the naturalization laws requiring titled foreigners to renounce their titles before being allowed the rights of citizenship. In the disturbed condition of Europe, crowds of foreigners, many bearing titles, had come for refuge to this country. In Europe a revolution was going on, "to which there was nothing similar in history." A large portion of Europe had already declared against titles, and where the innovations were to stop no man could presume to guess. These things we know and so Giles knew them. But as he pointed out there was nothing in this "land of the free" to prevent titled foreigners who came here from voting or even coming into the House with the full glamour of titled diginity.[92] At first the Federalists were inclined to treat this amendment as trifling[93] and provoked Giles so much by their ridicule that he withdrew it only to offer it again the following day.[94] However, it soon dawned upon them that political capital could be made of the opportunity, so Dexter of Massachusetts offered a further amendment providing for a renunciation of slaves by foreigners as a condition of naturalization.[95] A debate then occurred on the effect this proposal would have upon southern slave property. "It was calculated," says Giles, "to injure the property of gentlemen." Proceeding he gave his opinion of slavery at this time, the opinion generally held in Virginia as to slavery. He "lamented and detested it; but, from the existing state of

[92] Annals, Third Cong., 2nd Sess., 1034.

[93] Madison's opinions given in a letter to Pendleton, January 8, 1795, and to Jefferson. Madison, Works (Cong. Ed.) II, 30, 32.

[94] Annals, Third Cong., 2nd Sess., 1031, 1032, 1034.

[95] Ibid, 1039.

the country, it was impossible at present to help it. He himself owned slaves. He regretted that he did so, and if any member could point out a way in which he could be properly freed from that situation, he should rejoice in it. The thing was reducing as fast as could be prudently done. He believed that slavery was infinitely more deprecated in countries, where it actually existed, and consequently where its evils were known, than in other countries where it was only an object of conversation."[96] The anti-slavery amendment was thrown out, the amendment of Giles was passed, and in the act of January 29, 1795, it was required of an alien, in addition to other qualifications that he renounce any title of nobility he might possess.[97]

[96] Annals, January 1, 1795, 1039.
[97] Section I (clause 4) of that act.

CHAPTER III

THE JAY TREATY

While the events recorded in the preceding chapter were taking place, the Chief Justice had departed for England and was negotiating a treaty. Arriving at the British capital in June, 1794, he had been favorably received but had found the British ministry obdurate as to the main demands of the United States. By the end of November, however, a treaty had been arranged which, reaching this country four days after Congress had adjourned, was on June 8 submitted by the President to an extra session of the Senate. Ratified by that body, with the exception of the famous twelfth article, by only the required majority, it was returned on June 24 to Washington for his acceptance or rejection. The sessions of the Senate were of course secret, but the contents of the instrument were soon made public. Guesses as to its contents and erroneous statements were made, until finally the entire document was revealed by Senator Mason of Virginia.[98] The gravest fears of the people were found to be well-grounded. The western posts were to be surrendered by Great Britain but not until June 1, 1796; no remuneration was given to Americans for negroes carried off in violation of the supposed meaning of the treaty of 1783;[99] no pledge was made by Great Britain to abstain in the future from impressment of American seamen; the Mississippi River was to be opened to British trade; the United States should compensate Great Britain for confiscated debts of the American Revolution and for the captures made by Genêt's privateers in 1793. The West Indian trade, which Jay had been instructed to secure, was granted only to American ships of seventy tons burden, on the condition that the West Indian trade of the United States should be entirely free to British vessels and that American vessels should not carry to any port in the whole

[98] Mason and Tazewell had voted against it. Mason became a hero. For an interesting sketch of Mason see Grigsby's Convention of 1788.

[99] On the relation of the Treaty to Slavery, see Am. Hist. Assoc. Report, 1901, 275.

world except their own molasses, sugar, coffee, cocoa, and cotton.[100] In return for the East Indian trade, opened to the United States under certain conditions, we opened all our ports and gave up any right to lay further restrictions on English commerce. Citizens of both countries as well as Indians were to be allowed to pass freely across the international boundary line and to carry on trade and commerce. No duties were to be levied by either party on peltries carried across the line and Indians going in either direction were to pay no imposts on "their own proper goods and effects of whatever nature."

The principle that free ships make free goods was not maintained. The list of contraband articles was extended to include tar, pitch, turpentine and even provisions upon certain conditions; the sequestration of debts was prohibited.

What had our government secured? Payment for recent captures of our vessels, the promise that compensation in the future would be given for provisions seized as contraband of war, peace and friendship with Great Britain.[101] Had the British written the treaty without the presence of an American negotiator, they would have asked, it seemed to good Republicans, for little more or given little less than was written in the treaty negotiated by Jay. On account of the concessions granted by the United States to English vessels capturing prizes, the treaty could not, even if it were otherwise satisfactory, please France or her friends in America. It was not even pleasing to Jay himself nor to Hamilton—it was acceptable only in lieu of war, which to us would have been little less than disastrous.

As soon as the contents of the treaty were known, the people of the country rose in indignation. Many had not waited for a detailed knowledge of the document. Every act of Jay's from the time of his setting out to the exposure of the result of his work was subject to abuse. The secrecy in which the articles were held was regarded as an insult to the people. And

[100] The stipulations analyzed in this sentence were contained in the famous twelfth article struck out by the Senate.

[101] See the analysis made by Schouler, i, 305-308. Text in Senate, Doc., 357, Sixtieth Cong., 2nd Sess., 590.

now that Mason had actually made known what it contained the people grew wild. Meetings were held in all the important cities and the treaty and its framer denounced. Jay was burned in effigy and Hamilton, attempting the treaty's defence, was stoned at a public meeting. Resolutions from all over the country pleaded with the President to refuse his signature.[102] Virginia was not behind the other states in her popular outburst. A meeting in Richmond July 29, 1795, over which presided the eminent lawyer and teacher, Chancellor Wythe, adopted resolutions denouncing the treaty as "insulting to the dignity, injurious to the interest, dangerous to the security, and repugnant to the Constitution of the United States."[103] They declared that one hundred to one the people were opposed to the treaty, and believed that the Constitution meant to require ratification by two-thirds of the citizens of the United States rather than by a bare two-thirds of the Senate.[104] Resolutions also came from Norfolk, Powhatan,[105] Caroline, and Giles's home county, Amelia.[106] Giles, on October 29, 1795, in Petersburg, saw a memorial against the treaty being circulated by handbills and in the newspapers, for the purpose of being signed in the neighboring counties as well as in the city itself.[107] The elections of 1795 reflected the spirit of the people. Virginians pointed out the unconstitutionality of the treaty, and deprecated the invasion made by it into the domain of legislative authority. But we may be sure practical questions were closer to the hearts of our Virginians than mere matters of constitutional law. They were indignant that our seamen were still left at the mercy of the British press gang. They saw with indignation the provision made for the payment of debts owed by our citizens to British creditors and did not, on the

[102] See the dramatic account by McMaster of these meetings, vol. ii, 213, seq.

[103] Richmond and Manchester Advertiser, July 30, 1795. Magruder's Marshall, 98. Lodge, Washington, ii, 191. McMaster, ii, 226. At a subsequent meeting in Richmond, Marshall spoke.

[104] Richmond and Manchester Advertiser, Aug. 6, 1795.

[105] McMaster, ii, 226. Annals, Fourth Cong., 1st Sess., 161-171.

[106] Richmond and Manchester Advertiser, Aug. 15 and Sept. 15.

[107] Letter of Giles of Oct. 29, 1795. Jefferson MSS., Library of Congress.

other hand, fail to note the omission of any stipulation requiring payment by the British for slaves carried off at the end of the Revolution. They thought it unreasonable that the Mississippi should be freely open to our neighbors, that these should be allowed to continue their fur trade with the Indians across the international boundary, and saw only danger for our frontiers in the opportunity allowed the British for tampering with the American redskins. They found no good reason for the delay in surrendering British posts in the western regions. They resented a sacrifice of their West Indian trade. Virginians were opposed to the Jay Treaty because it sacrificed Virginia and southern and western interests.

Some of these questions were of real importance to Giles's state, particularly the negro question. The state of Virginia had suffered desperately during the Revolution. Property had been destroyed or carried off and portions of the country devastated. If Jefferson be correct it had lost more negroes than any other state.[108] In the six months of 1781, Cornwallis, according to the same authority, carried off 30,000 slaves; about 27,000 of these, however, died of fever and smallpox. The entire loss to the state for depredations during the war amounted to 3,000,000 pounds sterling.[109] Many citizens suffered greviously. A petition from one Miles Wilkinson, dated November 21, 1782, complains that seventy of his slaves had been carried off by the British.[110] One Thomas Wishart states to the legislature that by August, 1779 he had lost the whole of his negroes.[111] A Committee of the House of Delegates, appointed in 1783 to inquire into the subject of British infraction of the Treaty of 1783, in their report quoted from Washington to the effect that General Carleton under a "false construction" of the treaty had sent off "large numbers of the said slaves to Nova Scotia".[112] The same report presented the testimony of slave owners from Virginia who had gone in person

[108] Am. St. Pap., For., i, 207.

[109] Jefferson, Writings (Washington Edition) II, 427.

[110] Petitions of Norfolk County. MSS. in Va. State Library.

[111] Journal of the House of Delegates, Nov. 6, 1789.

[112] See letter, May 7, 1783, vol. 7, Writings of Washington (Ford), 241-244.

to New York in 1783 to demand the surrender of their negroes only to be refused by the British commander.[113]

The resentment of Virginia against the British was well founded. Virginians knew naught about what the international law of 1901 would say about the matter; they knew that their property had been carried off in violation of what were understood to be the terms of the treaty of 1783 and that the British showed no disposition to pay for their negroes. How important an embarrassment to Virginia were the British restrictions on the West Indian trade of the United States is not generally understood. Before the Revolution, however, a close connection between the islands in the Caribbean and the exporting communities of Virginia was very close. When this connection was limited after the Revolution by British restrictions on our trade, the merchants of Virginia suffered and grumbled. A petition from citizens of Norfolk, dated November 4, 1785, tells the story in heightened colors.[114] They declare that the present state of trade "is laboring under many evils and disadvantages in consequence of its being monopolized by Foreigners, particularly British Merchants and Factors." That "in consequence of the total prohibition laid on the Trade of the United States to the British West India Islands and other Ports in North America by the British Acts of Navigation, there is at present not only a rapid decrease in the number of American Bottoms but a total stop is already put to that valuable branch of Business, Shipbuilding (so profitable to this State in General), whereby the great number of mechanics usually employed in that Branch are reduced to the greatest distress and we conceive that a total loss of American Seamen must also ensue as the American Merchants find themselves necessitated to lay their vessels by the Walls or pursue a trade attended with nothing but loss and disgrace. While the Ships of that Country from whom those restrictions arise are admitted freely into all our ports with every privilege of the vessels of our own colonies, except a triffling difference of Tunnage."

[113] Journal of the House of Delegates, June 14, 1784.

[114] Petitions of Norfolk County, MSS. in Va. State Library.

These merchants, seamen, and producers of Virginia had looked forward to a satisfactory commercial treaty with England. After ten years a treaty had been secured but a treaty affording little relief. The navigation of the Mississippi and the fur trade with the Indians were jealously guarded by that increasing number of citizens of the region lying beyond the mountains where the Ohio and its tributaries led to the Mother of Waters. Many westerners could, therefore, not brook the concession of these valuable privileges to Englishmen and Canadians, nor could they reconcile themselves to the delay allowed the British in the surrender of western posts.[115] The party of Jefferson could not fail to fight with every weapon against the encroachments on the rights of the Transmontane frontiersmen. They must be held in loyalty; on them the party depended. Every step, therefore, in the negotiation and ratification of the treaty was watched with keen interest south of the Potomac.

There was another article to which great objection was raised—an article, as it turned out, vitally interesting to Virginia. I refer to the ninth article which stipulated that British subjects who held land in the United States and American citizens who held land in his majesty's dominions should continue to hold them and might grant, sell, or devise such lands in the same way as could natives; and that neither they nor their heirs or assigns, should, so far as respects these lands, be regarded as aliens. On the very day on which the treaty was signed by the negotiators, papers with regard to various estates formerly held by British citizens in America—including the Fairfax lands—were presented by Lord Grenville to Mr.

[115] That delay had been already without valid excuse. Although the treaty of 1783 bound Great Britain to a surrender of the posts, she had even before the ratification of that treaty determined to hold them. For two years she was indifferent to our violations of the treaty. After the formation of the Federal government protection was given her interests in the U. S. courts and she had no valid excuse for the retention of the posts. See McLaughlin in Am. Hist. Assoc. Report, 1894. The surrender of the posts even under the conditions stated in the treaty was very pleasing to western New York, if not to western Virginia. See speeches of N. Y. members, Annals, Fourth Cong., 1st Sess.

Jay.[116] According to Mason, the Fairfax purchasers and their friends, along with British merchants and agents constituted the Treaty Party in Virginia.[117]

The significance of the provision was seen at once in the South. In the resolution offered by Tazewell in the Senate in 1794 was one objecting to the ninth article "because the rights of the individual states are, by the ninth article of the treaty, unconstitutionally invaded."[118] In the debate in the House, later to be described, much attention was given to this article, particularly as it affected, or might affect, the Grenville lands in North Carolina and the Fairfax lands in Virginia. Giles referred to it; John Heath from the Northern Neck wished it might not revive old proprietary rights, with their long train of tenure, fealty and vassalage. "Perhaps," he said, "my fears may ensue from residing in that (part) of Virginia, where this tenure once prevailed."[119] It remained, however, for North Carolinians to use the strongest language. Macon said he had doubts yet in his mind, respecting the construction of the ninth article, relative to the holding of lands, "and if the construction which some gentlemen thought it would bear was the true construction, the question would be of greater importance in the State of North Carolina than the Declaration of Independence itself." He thought one-half of the lands in that state would be affected by that construction.[120] Holland said an attempt to make good the Grenville claims "would certainly be resisted by force."[121]

Before many years had passed the ninth article was, as prophesied, to be the basis of many suits over land claims, and particularly the basis for the conflict in Virginia over the Fairfax lands. The Supreme Court of the United States in Fairfax Devisee vs. Hunter's Lessee rested their decision, favorable to the plaintiffs, on the Jay Treaty, declaring "we are well

[116] Am. State Papers, For. I, 504-509.

[117] Letter of Stevens Thomson Mason to Henry Tazewell Oct. 6, 1795, in the important Tazewell collection discovered by Mr. E. J. Woodhouse.

[118] Annals, Third Cong., 2nd Sess., June 24, 1794.

[119] Annals, Fourth Cong., 1st Sess., 1063.

[120] Ibid, 1271.

[121] Ibid, 1290.

satisfied that the treaty of 1794 completely protects and confirms the title of Denny Fairfax."[122]

There was also considerable fear that the provision in the treaty for the payments of debts owed by Americans to British creditors would result in enforced payment from individuals. The amount of such money owed by all Americans was variously estimated at from $5,000,000 to $15,000,000. It was generally argued that Virginians owed more than the residents of any other state. Men from the North did not fail to press home their suspicion that many were opposed to the execution of the treaty because "it compels some of them to pay their just debts, which they contemplated evading."[123] Monroe in the third Congress had proposed in the Senate that the fourth article in the treaty—the article respecting debts—should be suspended until the United States received assurance that Great Britain had complied with her obligation to us.[124] Fisher Ames thereupon wrote "murder will out."[125]

In the elections in Virginia following the negotiation of the treaty, the Federalists were badly beaten both for the legislature and for Congress. A Republican governor was elected by the Assembly. Resolutions were adopted approving the conduct of Mason and Tazewell in the Senate, and proposing an amendment to the Constitution of the United States giving the House of Representatives part in the treaty making power, diminishing the senatorial term by three years and disqualifying judges of the supreme court from holding other office. The Legislature refused to express undiminished confidence in the President.[126] Such was the feeling in Virginia when Congress assembled on December 7.

The Treaty had not been immediately promulgated, for it had been returned to England in order that she might accept

[122] 7 Cranch, 627.

[123] Annals, Fourth Cong., 1st Sess., 542.

[124] Annals, Third Cong., 1st Sess., 93-94.

[125] Works (1809) p. 478.

[126] Randall, Jefferson, ii, 270. Ambler, Sectionalism in Virginia, 65. See Acts of session 1795, 54, 55. Although refusing to express undiminished confidence, they did "entertain the highest sense of the integrity, patriotism, and wisdom of the President of the United States."

the Senate amendment striking out the twelfth article, and might also revoke an order, now renewed, authorizing the seizure of provisions bound for France in the vessels of neutrals. The Senate had already accepted the treaty as we have seen; but an appropriation of money for its execution depended on the House of Representatives, and this body seemed disposed to have something to do with it. The first question arose as to the form of the answer to the President's message. An answer had been drawn by the select committee consisting of Madison, Sedgwick, and Sitgreaves, a section of which answer, "Theodore's last-effort-at-the sublime and beautiful," contained words expressive of undiminished confidence in the President. These words, implying as they would have done, an approval of his signature to the treaty were not adopted.[127] On February 29, the treaty was formally proclaimed, and on March 2, the following resolution was offered by Edward Livingston: "*Resolved*, that the President of the United States be requested to lay before this House a copy of the instructions to the Minister of the United States, who negotiated the treaty with the King of Great Britain, communicated by his message of the first of March, together with the correspondence and other documents relative to the said treaty."[128] This resolution gave rise to an extended debate on "the constitutional rights of the House of Representatives in checking the treaty making power. The parties on both sides came forward and placed the fate of the proposition on that constitutional ground." In Giles's opinion, "the opposers of the resolution in their first onset, assumed a most authoritative tone, and without equivocation

[127] See Giles to Jefferson, Dec. 9 and 15. Giles thought the message conciliatory. It made "a considerable impression upon the House of Representatives." He did not approve of the "studyed silence respecting France," however. He said the manner in which the treaty was mentioned in the speech had embarrassed its opposers as to the answer. If an attempt were made to bring the Treaty in, it would be said that it was not before the House, and if they did not bring it in, it would later be said when the Treaty was attacked that it was uncandid not to have notified the President at once. He himself was in favor of condemning it now, but in a manner respectful to the other departments.

[128] Annals, Fourth Cong., 1st Sess., 426. The resolution was subsequently amended.

enthroned the treaty making power in a despotism complete. They declared that the treaty making power was undefined in its nature, unlimited in its extent, and paramount in its authority. They then proceeded to denounce those who would not yield an assent to this doctrine, as rebels and traitors against the constituted authorities." For this doctrine and language Giles thought "we are probably indebted to some degree to the mockery displayed on the President's last birthday." In his opinion their doctrine discarded "the utility of checks, and by means of the treaty makeing power completely checkmates the whole constitution."[129]

The views of Giles outlined in the preceding paragraph had been more elaborately set forth in a speech of March 11. Gentlemen claimed, he said, that the treaty making power is unlimited. The doctrine was alarming. "Never, I will venture to say, was there an instance of a more complete rout of so complete a system of checks, within the term of six years, in any government on earth; and if the doctrine now contended for be agreed to, then I do declare that the triumph of evasion of checks is complete indeed, and little will be left hereafter to be evaded." He denies that the clause in the Constitution making the Constitution, treaties, and laws of the United States supreme law of the land makes treaties supreme over laws. "The right of annulling treaties is essential to national sovereignity." There are two kinds of checks over treaties provided in our Constitution; one is the enumerated powers—so far as treaties encroach on these powers they must be submitted to Congress; the other is the power to make appropriations. And in the exercise of their discretion in this matter, their duty is not perfunctory. Their opinions must be "matured by deliberation," "their conduct must rest on the operations of their own minds." To admit that the House has "to

[129] Giles to Jefferson, March 26, 1796. Jefferson MSS., Lib. Cong. Jefferson's opinion of the Treaty was that it was an "execrable thing," an "infamous act, which is really nothing more than a treaty of alliance between England and the Anglomen of this country against the Legislature and people of the United States"—letter to Edward Rutledge, November 30, 1795. Writings of Jefferson (Ford) vii, 40.

make the requisite provisions for carrying" into effect treaties is to confer on the President the power to legislate and "necessarily destroys their right to the exercise of discretion."[130] The debate continued on this resolution until March 24 when it was carried by a vote of sixty-two to thirty-seven, all the members from Virginia voting in the affirmative,[131] and nearly all the representatives from the South except those from South Carolina voting the same way.

The President had already armed himself. Consulting Hamilton, and sustained by the whole cabinet, on March 30, he sent down a message declining to comply with the request of the House on the ground that their concurrence was not necessary to give validity to the treaty making power and because of the necessity of maintaining the bounds of authority assigned by the Constitution to the different departments.[132] Unconvinced by the President's reasoning the House thereupon adopted resolutions disclaiming an agency in making or ratifying treaties but asserting their right when a treaty is made, which requires a law or laws passed to carry it into effect, to deliberate and determine the propriety or impropriety of passing such laws, and their right also to ask for information without stating the purpose for which it was asked.[133]

In the meantime treaties with the Indians, Spain, and Algiers had been ratified and came before the House in order that provision might be made for their execution. Seeing their opportunity the Federalists intended grouping all four of the treaties together and so forcing on all who desired the execution of the other three treaties provision for the execution of the British.[134] Some of them had in mind also holding up certain legislation of an entirely different character.[135] Giles,[136]

[130] Annals, Fourth Cong., 1st Sess., 500-514.
[131] Ibid, 759.
[132] Richardson, Messages, i, 194.
[133] Annals, Fourth Cong., 1st Sess., 771, 782, 783. See also Giles to Jefferson, Apr. 6, 1796.
[134] Gibbs, Administration, etc., i, 321-331. Letters of prominent Federalists. See also Randall, ii, 292, note. See Sedgwick's resolution of April 13.
[135] Gibbs, i, 331. Goodrich hopes the Senate will "arrest the whole government, and let the people decide."
[136] Annals, Fourth Cong., 1st Sess., 942, 943, 965, 968.

with the other Republicans, insisted on considering the treaties separately, and finally gained his point. The British treaty came up for discussion on April 14, and was discussed for sixteen days. Madison and Gallatin and all the leading Republicans addressed the House in opposition to the execution of the instrument. Giles arose on April 18, and delivered a speech covering twenty-eight columns in the Annals. He divided his discussion into two portions. First an examination of the treaty, article by article, and second a consideration of the probable consequences of refusing to accept it. He criticised our abandonment of the claim for compensation for property carried off, the delay in the surrender of the western posts, the assumption by our Government of debts due by American citizens to British citizens before the Revolution and the increase in the debt of the United States which that would involve, the prohibition of sequestration of debts during war as prohibiting the United States from resorting to the best means not only of preventing war, but of the most efficacious means of supporting it, the concession to Great Britain of the most favored nation privilege as respects customs duties, the abandonment of the principle that free ships make free goods. On the subject of the failure of the treaty to provide compensation for negroes carried off by the British, he was speaking of a matter close at home and spoke shrewdly and to the point. It sounded strange to him to hear it declared that the seventh article of the treaty of 1783 in which the British promised to withdraw their armies "without carrying away any negroes or other property of the American inhabitants" did not apply to property seized during the war. At the end of the war the British army was in New York, the negroes in the South, "so that if the article did not include that species of property taken in the course of the war, and in the possession of the British at the end of it, it was worse than nonsense. It never could have been supposed that, upon the first dawn of peace, the British would have left New York and invaded the Southern country, for the purpose of plundering the inhabitants of their negroes." "Having examined the treaty at large, with candor,

and with the best judgment he possessed, he found in it so much to condemn, and so little to applaud, and some of the objectionable parts were so formidable in themselves, that it was wonderful to him that the treaty should have found an advocate, upon its mere merits, in the United States. Viewing the subject as he did, and believing it his duty to exercise his discretion upon it, nothing contained in it could justify him in giving his vote for the necessary provisions to give it efficacy."[137] The contents of the treaty proved the former contentions of those who have charged British influence in our affairs. As for the consequences that would flow from a failure to execute the treaty, he denied that such action would result in a total dissolution of the Government itself. The House had already decided that it had discretion constitutionally to consider the expediency of the expenditure for the execution of treaties and the ways of raising money. It was true also that in this contest the House had not been the aggressor. Nor would a refusal to carry out the treaty result in war with Great Britain. Great Britain like all other nations was led by her interests; and her present military situation and dependence on trade with the United States all went to show that it was not to her interests to have war with us.

In conclusion he declared, "upon the whole, he conscientiously believed the treaty to be a bad one. He believed it contained the most complete evidence of British interference in our national affairs, and had laid the foundation for the further extension of British influence. It has restricted the exercise of some of the most important rights of national sovereignty. It has voluntarily hazarded the neutrality of the United States in the present European war, and destroyed all pretensions to its character of impartiality. It has not afforded protection to our neutral rights, which was amongst its great objects; and in the adjustment of the differences resulting from the inexecution of the Treaty of Peace, it is unequal and unjust. All these important circumstances considered, and when it is also considered that the British persevere in impressing our

[137] Annals, Fourth Cong., 1st Sess., 1044.

seamen and seizing our vessels, in violation of the clearest rights of neutral nations, even since the signing of the treaty, he could not consent to be the instrument of giving it efficacy. He believed that it was one of those extraordinary cases which justified strong and extraordinary measures."[138]

But the efforts of the Republicans were of no avail. Giles himself had from the first thought the treaty party would succeed.[139] On April 6 he wrote Jefferson, "the weight of the President, twenty senators, funded gentry—British gentry—land gentry, aristocratic gentry, military gentry and besides these a gregarious tribe of sycophants and runmad speculators, will be found to be as much as the shoulders of the majority of the House will be able to bear; particularly when their activity and ingenuity in making divisions amongst the well meaning part of the community are taken into consideration."[140] But sentiment was changing among the people. Petitions came in urging the execution of the treaty[141] and among these were some from Virginia herself.[142] Finally in the House was delivered an epoch making speech, reasonable, eloquent, entrancing, by one already marked for the grave, Fisher Ames of Massachusetts. The next day came the vote. For declaring the treaty "highly objectionable" forty-eight votes were cast against forty-eight and the speaker voted in the negative. Fifty against forty-nine refused to describe it as "objectionable," and at last fifty-one to forty-eight voted in favor of carrying the treaty into effect,[143] every member from Virginia but George Hancock voting in the negative.[144] The vote was strictly sectional; only four votes from south of Mason and Dixon's line

[138] For the entire speech, see Annals, Fourth Cong., 1st Sess., 1025-1053.

[139] Letter to Jefferson, March 26, 1796. Jefferson MSS.

[140] Jeff. MSS., Lib. of Cong.

[141] Annals, Fourth Cong., 1st Sess., 1114, 1264, 1228. McMaster, ii, 281 and following.

[142] Bassett, Federalist System, 135. King, Life and Correspondence of King, ii, 59. They were from Winchester, Alexandria, Richmond, Staunton. See Richmond and Manchester Advertiser, Jan. 27, April 27, May 18, 1796.

[143] April 30.

[144] Randall, Jefferson, ii, 295. Annals, 1291. Hancock was from Botetourt County in the valley, which has been traditionally Federalist.

were cast for the treaty and two of them were from South Carolina; thirteen from the North were given against it. New England and the middle states carried the day.

Although Giles chafed at being detained, Congress remained in session another month. Besides opposing the building of frigates,[145] the creation of a standing army,[146] and favoring the appointment of government agents abroad and the equipment of our seamen with certificates of citizenship,[147] his service seems at this meeting to have been confined to the unsuccessful fight against the Jay Treaty.

[145] Annals, Fourth Congress, 1st Sess., 885, 893.
[146] Ibid, 908, 912.
[147] Ibid, 391, 394.

CHAPTER IV

THE RETIREMENT OF WASHINGTON AND THE FRENCH WAR

Before another session of Congress, the electors had been chosen for a third time to choose a President. Washington's declining to accept another term gave an opportunity for the first national party contest at an election. The Republicans had no difficulty in making a selection of their candidates, Jefferson and Burr. But the Federalists were troubled as to the men whom they should put before the country. Finally John Adams and Thomas Pinckney were settled on. A campaign characterized by intense bitterness on the part of political pamphleteers, by some fraud as well as by political intrigue came to an end February, 1797, when the count of electors by Congress showed John Adams returned as President and Thomas Jefferson as Vice-President. In the meantime Congress had met in its second session, December 5, and the last message of Washington was heard. The congenial task of writing the answer was assigned to the orator of the Jay treaty defence, Fisher Ames, ardent in his Federalism and effusive in his rhetoric. It expressed "anxiety and deep regret . . . that any interruption of our harmony with the French Republic has occurred." "Your endeavors," it went on to say, "to fulfill that wish . . . cannot fail, therefore, to interest our attention . . . We cherish the pleasing hope," the address continued, "that a spirit of justice and moderation will ensure the success of your perseverance." Proceeding, it contrasted our tranquil prosperity "with the calamities in which the state of war still involves several of the European nations." The administration of Washington was called "wise, firm, and patriotic," and "signally conducive to the success of the present form of government." Regret was expressed at the President's coming retirement and an eloquent eulogy of his character and services pronounced.

With the sentiments expressed in Ames's document more radical Republicans could not agree. Giles wished the whole document to be recommitted and, objecting to the tone of that paragraph in the address having reference to France, he secured an amendment more expressive of friendly feelings to that Republic. On reflection, also, he could see a want of wisdom and firmness in the administration for the last six years—"If we took a view of our foreign relations, we should," he said, "see no reason to exult in the wisdom or firmness of our administration." "If we take," he continued, "a view into our internal situation and behold the ruined state of public and private credit, . . . he never could recollect it so deranged. If we survey this city, what a shameful scene it alone exhibits, owing, as he supposed, to the immense quantity of paper issued." Surely this could afford no ground for admiration of the Administration that caused it. He confessed to thinking less of the President than did some others. If others regretted the retirement of the Father of his Country, Giles wished him to retire at once and thought the country would not suffer, and that the President would be happier than he then was. Thousands of men in the United States could fill the office and many could fill it with "credit and advantage." Gentlemen who had opposed prominent measures of the administration could not be expected now to come forward and approve of them. Let gentlemen compliment the President as individuals but let not adulation pervade the House.[148] When the vote on the answer was taken, Giles, Andrew Jackson, Edward Livingston, Nathaniel Macon, Abraham Venable, and seven others voted nay.[149] And were they committing any offence

[148] Annals, Fourth Cong., 2nd Sess., 1615-1618. Giles said he believed in the President's good intentions, and did not deny his patriotism. Thought him a well meaning man but misled. (p. 1622) Later, in 1812, Giles admitted his erroneous judgment of Washington, and came to admire him in comparison with Gallatin, etc. In 1828, during the Jackson campaign, Giles explained his refusal in 1797 to favor the answer to the President's speech. As he had opposed most of Washington's important measures he could not wish his example might be the guide for his successors. U. S. Telegraph Extra, July 5, 1828.

[149] Annals, 1667.

against morals or etiquette by so doing? Should men who had made themselves famous for their opposition to each of the measures of the first President's administration declare that they now wished the record which they had condemned to be the guide of succeeding Presidents? Did courtesy require that they should condemn themselves in order to flatter the Father of his Country? If Giles was wrong he erred in good company; and withal his constituents were with him. But were Madison and the majority of the Republicans stultifying themselves by voting with the Federalists? In all probability they regarded their votes as harmless and acted in a perfunctory manner. But Giles was anything but perfunctory—to him every act was significant—was worth a fight. Repulsed on this occasion, he did not speak on the following days as frequently as usual and seemed to have absented himself much more than was his custom in preceding sessions.

Congress adjourned on March 3, 1797. Giles hastened back to Virginia to attend to most interesting business. During the month of March he led to the altar Miss Martha Peyton Tabb. In those days marriage was a more formidable ceremony than it is at present. In the records of Amelia County is Giles's marriage bond of $150 and a quaint note signed by John Tabb and addressed to the clerk of the court reading as follows:

"Sir:

Be pleased to grant a license to Mr. William Giles to be intermarried with my daughter Martha Peyton Tabb." Mr. William Giles made a good bargain with his $150 bond. By this marriage he allied himself with two of the most aristocratic families of Virginia, the Peytons and the Tabbs, and, through the intermarriage of his wife's sisters and relatives, with other influential families—the Bannisters, Archers, etc. In addition to this widening of social relations so important in those years in Virginia politics, he improved also his material welfare, for Mr. John Tabb, his wife's father, formerly a burgess and a member of the Committee of Safety, left a personal estate of £31,879.[150] On a spot three miles from the Appomattox,

[150] William and Mary Quarterly, XIII, 126.

and in a pleasant and retired situation he built the famous residence in Amelia called "Wigwam," a spacious frame house of twenty-eight rooms, "prettily and neatly built," "surrounded by a grove of mammoth trees."[151] There he dispensed hospitality and charity, talked politics with his friends, collected plants and raised flowers, exchanged seeds and ideas with Thomas Jefferson, in short conducted a fine old Virginia plantation with its thousands of acres of lands, many negroes, and ruinous waste.

On March 4, 1797, John Adams was inaugurated President. The attitude of Giles to Adams prior to the inauguration was not unkindly. In a letter to his wife dated December 12, 1796, Adams quotes him as saying "the point is settled. The V. P. will be President. He is undoubtedly chosen. The old man will make a good President, too! . . . But we shall have to *check* him a little now and then. That will be all."[152] In this as usual during the early part of his career, Giles, though independent enough, was in accord with the attitude of Jefferson. Indeed the turning of the Republicans to Adams, whom they respected more than they did the other Federalist leaders and whom they possibly hoped to convert into a semi-Republican, is very interesting.[153] But the conciliatory plans of both Jefferson and Adams seemed to have been frustrated by the Hamiltonian cabinet which the new President retained. No sooner had the extra session of the fifth Congress convened than the effort to "check" the President a bit began. The circumstances necessitating the gathering of the extra session grew out of the strained relations with France which had arisen by 1797. Smarting at our failure to carry out the treaties of 1778 as they interpreted them, objecting to the Jay Treaty and the apparent betrayal of French interests involved in it as well as the seeming deception practiced toward the French government in regard to the objects of the negotiations with Great Britain, and resenting the recall of Monroe by the Washington adminis-

[151] Mrs. Overton, Martin's Gazetteer of Virginia, Charlottesville, 1835, 128.
[152] The Life and Works of John Adams, i, 495.
[153] Ibid, 495. Writings of Jefferson, vii, 103.

tration,[154] the French had refused to accept our next minister, C. C. Pinckney, or even to allow him to remain on French soil; also in order to punish us for our conduct, they issued an order authorizing French ships to treat neutral vessels as these neutrals allowed themselves to be treated. To the assembled Congress Adams transmitted a message reciting the treatment received by our minister, and calling for prompt measures of defence.[155] The friends of the administration desired in the answer to the President to express the confidence of Congress in the administration and their approval of his conduct; the opposition contended that a removal of the inequalities produced by the Jay treaty would be all that would be necessary to produce an accommodation with France. For instance, Giles asserted that France was not on the same footing with reference to us as other powers and the question was that of approving all the President had done and putting France on an equality with other nations. All the steps taken by the Executive seemed to Giles to have had in view an eventual appeal to arms, which he wished to avoid. He could not agree to be "either silly or insolent" in showing our ultimatum; when strife came, however, he would stand by his country.[156] He was one of those who felt "a strong apprehension of a war." He would, however, "stand by his country, in the storm and share its fate."

On the twenty-fifth Giles spoke for three hours on the subject. Going into a history of our relations with France since the beginning of the war with England, he declared that there had been a condition of tranquility until the Jay treaty. This had been injurious both to France and to us, particularly in

[154] A controversy took place between Giles and Harper in May and June 1797 over some charges of improper conduct made by Harper against Monroe while our Minister in France. Giles demanded explanations and documents, etc. He claims that he had been in "habits of friendship and intimacy with Colo. Monroe; from an early period of my political life to the time of his mission to France." See Correspondence in Monroe MSS., Lib. Cong.

[155] Annals, Fifth Cong., 1st Sess., 50. Richardson, Messages and Papers, 1, 233.

[156] Annals, 70, 96, 108.

the matter of neutral ships and contraband of war. Some of the present French demands were unjust and trifling; these should be refused. As to the dismissal of Pinckney, he would not say that this was right, but the French had some justification and they still wished harmony with the American people. To deny that we had obligations to France was to contradict our feelings. That there was in this country such a thing as a French influence was contradicted by our conduct in the Genêt affair. One gentleman had spoken of the bad effects of French depredations on our farming interests. How about the effect of the British Treaty? Since that document was signed wheat had fallen from three dollars a bushel to seven shillings, at which price he was then selling it. What would be the effect of war on both farmer and merchant?—greater taxes and smaller prices on produce. It would mean also a more intimate connection with Great Britain. The adoption of the language of the friends of the administration in the answer to the President would be equivalent to a declaration of war. One gentleman had said such an answer would be a second Declaration of Independence. According to Giles we had been needing a second Declaration of Independence ever since the British treaty took away so many of our sovereign rights, but this was not the time for its announcement.[157]

As a result of the discussion, a compromise was agreed upon and the answer as passed expressed a hope that the United States would place France "on grounds similar to those of other countries, in their relation and connection with us, if any inequalities shall be found to exist."[158] For this compromise Giles voted though he voted against the final draft of the answer.[159] Later he confessed he had little confidence in the President and asserted that his changed feelings were due to the President's speech.[160]

We have seen the attitude of the Petersburg member on the general French question. It was the attitude of the Republicans

[157] Annals, 138, 143.
[158] Ibid, 231
[159] Ibid, 233.
[160] Ibid, 364.

as a party. Nor was his opposition or theirs a theoretical proposition. They made opposition against an increase of expenditures and an increase of taxes. When William Smith in behalf of the administration brought forward resolutions providing for fortifications, for increases of the army and navy, and for the raising of money, Giles disapproved of precipitation and wished the matter to rest until the next session.[161] Our military establishment was already, he thought, too large by one-half, and yet advantage was taken of the present alarm to increase it.[162] Our military establishments had not, he declared, paid for themselves—they were a bad bargain.[163] "Our great interests lay," in his opinion, "in the soil; and if ever the vitals of the country were to be drawn together for the purpose of protecting our commerce on the sea, he should greatly lament it." A navy, in his judgment, was a great evil; the despotism of nations kept pace with the ratio of expense, and yet, he was convinced that some gentlemen desired to increase the expenses of government.[164] Each measure as it came up was fought by the opposition including Giles. But despite opposition Congress passed acts authorizing the completion of the "United States," the "Constitution," and the "Constellation," and made provision for the employment of 80,000 militia subject to immediate command. Duties on salt were increased, a stamp tax provided, and a loan of $800,000 authorized.[165] And the Senate ratified the appointment of Pinckney, Marshall, and Gerry as envoys extraordinary to France.

Whether it was the charms of a new wife, the state of his health, or the necessary quietness of Congressional proceedings awaiting the issue of the special mission to France that prevented Giles's prompt attendance on the second session of the Fifth Congress, I do not know, but, at any rate, he did not appear in Philadelphia until February 7, 1798, although

[161] Annals, 239.

[162] Ibid, 328.

[163] Ibid, 346.

[164] Ibid, 382.

[165] Schouler, i, 396. See Acts of June 24, July 1, July 8, July 6, 1797.

Congress assembled on November 13.[166] On the nineteenth of March a message was received from the President declaring that from a careful examination and consideration of the dispatches of the envoys to France, he could see "no ground of expectation that the objects of their mission can be accomplished on terms compatible with the safety, honor, or the essential interests of the nation," and urged Congress "to manifest a zeal, vigor, and concert in defence of the national rights proportional to the danger with which they are threatened."[167] Resolutions were offered by Sprigg of Maryland on March 27, declaring that under the circumstances it was inexpedient to declare war on France, that arming merchant vessels ought to be restricted, and that seacoast and internal defence should be maintained.[168] Harper led the debate against the resolutions and had sharp clashes with Giles, who, in harmony with the resolutions and the Republican position, had already declared that defence could not be carried beyond our coast, where it was always proper. Some in the House, he thought, wished war. When we had information as to the ground on which our ministers had been refused audience the House might then be able to speak. Harper in reply declared it was not unusual for Giles to display his ignorance. Brooks of New York, in answer to Giles's sneers at his services in the army "in the honorable and humane employment of clothier," replied: "If the gentleman doubts my being a soldier, I am here to answer him." Otis characterized a statement as a "bold, ungraceful—disgraceful assertion."—Giles replied that this was a charge which neither Otis nor any other man dared make in any other place. Cries of order having been raised the speaker replied that nearly every member who had spoken had offended.[169] In the discussion on the Sprigg resolution, Giles asserted that no nation had a right to go to war except when attacked. He

[166] Though no quorum was present in the Senate till Nov. 22, and the House had little to do.

[167] Richardson, i, 264.

[168] Annals, 1319.

[169] Annals, 1256-1262. There was talk of a duel at one time; in the north Otis was reported killed by Giles.

was against war "with any nation upon the earth;" he regarded it as the "greatest calamity that could befall any nation."[170] His enemies, however, were not slow to press upon him his attitude in 1794 and charged him with having then stood for war with Great Britain. Harper indeed read an extract from a speech of Giles of March 28, 1794, on a motion by Dayton providing for the sequestration of British debts in order to show how patriotic the Virginia representative had been at that time.[171] On March 30, Giles declared he was not satisfied with the sincerity of the proceedings of the executive; he wished the correspondence and instructions of our ministers. The House accepted the challenge and, on April 2, adopted a resolution asking for these documents, and thereafter Giles was no longer seen in the legislative halls. The triumph of the Federalists seemed so complete that farther resistance appeared useless, and, besides Giles, during this same month many other Republican members withdrew.[172]

Before concluding our discussion of this meeting of Congress, it is necessary to introduce briefly one other interesting topic. During the course of the session the slavery question came up. When the question of the erection of a government in the Mississippi Territory was under consideration, an attempt was made to extend to the government of the territory the provision in the ordinance of 1787 prohibiting slavery or involuntary servitude except in punishment of crime. "This was the first debate," says Benton, "on the prohibition of slavery in the territory which took place under the Federal Constitution, and it is to be observed that the constitutional power of Congress to make the prohibition, was not questioned by any speaker. Expedient objections only were urged."[173] The plea of the southern members was that argument, heard so frequently in after years, that an extension of slavery over a larger territory would ameliorate the condition of the slaves. Giles doubted whether the restriction as to slavery was "calculated to amelio-

[170] Annals, 1323.
[171] Ibid, 1344.
[172] Schouler, i, 401.
[173] Benton, Abridgement, ii, 224, note.

rate the condition of the class of men alluded to; he believed not. On the contrary, it was his opinion, that if the slaves of the Southern States were permitted to go into this Western country, by lessening the number in those states, and spreading them over a large surface of the country, there would be a greater probability of ameliorating their condition, which could never be done whilst they were crowded together as they are now in the Southern States."[174] Nicholas presented the same idea and asked if such a diffusion should be carried out it would not be doing such service that in time "it might be safe to carry into effect the plan which certain philanthropists have so much at heart, and to which he had no objection, if it could be affected, viz: the emancipation of this class of men." "And when this country shall have become sufficiently populous to become a State," he added, "and the Legislature wishes to discountenance slavery, the increase of slaves may be prevented, and such means taken to get rid of slavery altogether, perhaps in conjunction with other parts of the United States, who by that time may be in such a situation as to admit of it, as shall appear prudent and proper."[175] Not only was the absence of constitutional discussion and the views of the southern statesmen interesting, but the vote is suggestive—only twelve Congressmen registered themselves as favorable to the adoption of the restriction.[176]

[174] Annals, Fifth Congress, 2nd Sess., 1309.
[175] Ibid, 1310.
[176] Ibid, 1312, (March 23, 1798.)

CHAPTER V

THE VIRGINIA RESOLUTIONS OF 1798 AND THE ELECTION OF 1800

As is usual with a political party in a period of triumph, the Federalists were overbold. Enjoying a temporary popularity through the publication of the X. Y. Z. correspondence, they gave themselves up to a policy of revenge against those who had so severely attacked their policies, and of attempted destruction, while they had the upper hand, of that mad and dangerous opposition party to which Giles lent his peculiar talents. The Alien Act caused innocent Frenchmen to tremble for their safety; the Sedition act caused Republicans to take secret measures for protection.[177] Even in Virginia there was "a most respectable part of our State who have been enveloped in the X. Y. Z. delusion, and who destroy our unanimity for the present moment."[178] In Richmond, John Marshall received an ovation on his return from France[179] and the Republicans seemed on the defensive. However, the passage of the new Naturalization Act and the Alien and Sedition laws in June and July, and the coming of the tax gatherer caused a reaction. Although John Taylor, talking secession,[180] found apparently little sympathy and from Jefferson even met with a remonstrance,[181] yet mass meetings in the Piedmont sections and certain counties in the Tidewater denounced the Alien and Sedition Acts and petitioned for their repeal.[182] One set of petitions came from Amelia County, not improbably drafted by Giles's own hand. The summer was exciting. Even college

[177] See Moreau de Saint Méry's Voyage Aux États—unis, 263. Saint Méry says he was given two keys to a retreat for use in case his house was threatened.

[178] Jefferson to John Taylor, Nov. 26, 1798. Writings of Jefferson (Ford), vii, 309.

[179] Norfolk Herald, August 30, 1798. Magruder's Marshall, 129.

[180] Jefferson, Writings (Ford) vii, 263.

[181] Ibid, vii, 264.

[182] Norfolk Herald, 1798, 1799. Anderson, Va. and Ky. Resolutions, Amer. Hist. Review, v, 46. Ambler, Sectionalism in Virginia, 67. McMaster, ii, 418.

students reflected popular opinions; at William and Mary, on Commencement day, July 4, 1798, young enthusiasts paraded the streets and exhibited a representation of John Adams as King receiving an address from Congress. John Marshall on a visit to Fredericksburg was insulted in the theatre and all but put out to the tune of the Rogues' march.[183] The Father of his Country during the last of August thought the crisis so important, and the temper of the people so "violent and outrageous" as to necessitate a conference between himself, his nephew, and John Marshall in view of the coming elections.[184] To the Legislature of the state, men looked with expectancy. Long before that body met, prominent Republicans had begun to plan for its satisfactory action.

On October 11, Jefferson wrote Senator Stevens Thomson Mason, the notorious statesman who had revealed to his countrymen the contents of the Jay Treaty: "The X. Y. Z. fever has considerably abated through the country, as I am informed, and the Alien and Sedition laws are working hard. I fancy that some of the state legislatures will take strong ground on this occasion."[185] Jefferson's "fancy" in this matter was perfectly correct. During the same month at Monticello, George and Wilson Cary Nicholas probably discussed with him[186] the proper procedure to be adopted. Thereupon Jefferson drafted resolutions which Wilson Nicholas handed, under

[183] Norfolk Herald, July, Sept. 1, 1798. J. A. C. Chandler in address at Wm. and Mary College, Richmond Dispatch, July 8, 1900.

[184] Washington, Writings, (Ford) xiv, 76, (Aug. 27, 1798.)

[185] Ford, vii, 283. Randall, ii, 448. It is interesting to read what follows. "For my own part, I consider those laws as merely an experiment on the American mind, to see how far it will bear an avowed violation of the constitution. If this goes down we shall immediately see attempted another act of Congress, declaring that the President shall continue in office during life, reserving to another occasion the transfer of the succession to his heirs, and the establishment of the Senate for life. At least this may be the aim of the Oliverians, while Monk and the Cavaliers (who are perhaps the strongest) may be playing their game for the restoration of his most gracious Majesty, George the Third. That these things are in contemplation, I have no doubt; nor can I be confident of their failure, after the dupery of which our countrymen have shown themselves susceptible."

[186] See Ford, vii, 290, (footnote) for a letter of Dec. 11, 1821, to J. C. Breckenridge. Randall, ii, 448.

a pledge of secrecy as to their authorship, to John Breckenridge of Kentucky, who happened in Albemarle County in October.[187] These resolutions, in a modified form, the Legislature of Kentucky adopted during the next month. On the seventeenth,[188] Jefferson sent the same resolutions to Madison saying "we shall distinctly affirm all the important principles they contain," and on the twenty-sixth wrote John Taylor "for the present I should be for resolving the Alien and Sedition laws to be against the constitution & merely void, and for addressing the other States to obtain similar declarations."[189]

To both Madison and Taylor, Jefferson wrote that Republicans should not commit themselves farther but "reserve ourselves to shape our future measures by the events which may happen." In what should take place, Giles proposed to take part. Having on October 2, 1798, sent to the Governor his resignation from the House of Representatives,[190] he was elected to the General Assembly of Virginia ready to do his share in promoting the cause of the Republican party and in carrying out the will of Thomas Jefferson. On December 3, the Legislature came together. Partisan feeling was at its highest. Former friends, separated by party barriers, now refused to speak and dared not stop at the same tavern. A Federalist who entered a Republican boarding house did not escape without a fight.[191] The opposition of the House of Delegates first attempted to displace the Republican speaker and clerk; to answer back with a bold stroke, John Taylor, on the next day, asked leave to bring in a bill "to secure the freedom of debate

[187] It is sometimes stated that John Breckenridge was present at Monticello. He was, however, probably not in such a conference, if it was held. The draft made by Jefferson was handed to Breckenridge by Wilson Nicholas, apparently without Jefferson's knowledge, and possibly without his expectation that the resolutions would be proposed in Kentucky. Breckenridge was advised by Nicholas not to go to see Jefferson for fear the authorship of the resolutions would be suspected. See Letter, W. C. Nicholas to Jefferson Oct. 4, 1798. Jeff. MSS., Lib. of Congress.

[188] November.

[189] Ford, Writings of Jefferson, vii, 288, 311. Randall, ii, 452-3.

[190] Calendar, Va. State Papers, viii, 519.

[191] Chandler above cited.

and proceedings in the Assembly."[192] Giles's name first appears on December 20 and is added to the Committees of Courts of Justice, Propositions and Grievances, and Claims.[193] Two days before, the speaker had read a letter from the Governor of Kentucky enclosing the resolutions adopted by the Legislature of that state and "inviting the coöperation of the General Assembly of this Commonwealth, in obtaining a repeal of certain acts of the United States, passed in their late session.[194] Resolutions written by Madison were offered by John Taylor and were discussed in the Committee of the Whole. Against the resolutions arose many distinguished Federalists. George Keith Taylor, soon to be brother-in-law of John Marshall, Henry Lee of Westmoreland, father of the distinguished Confederate leader, and others nearly as notable threw the weight of their ability, logic, and influence against the dangerous document. In favor of the resolutions appeared that great apostle of strict construction and influential Republican leader, John Taylor of Caroline, who proposed the resolutions, and Wilson Cary Nicholas, William B. Giles, James Barbour, and the other leading Republicans. The debate took a wide range. The Alien and Sedition laws are constitutional, said the Federalists, because they promote the general welfare, because the General Government must guarantee to each state a Republican form of government, because aliens are not entitled to all the rights of citizens, because freedom of speech does not mean unrestrained utterance. They are unconstitutional, said the Republicans, because they transcend the powers of Congress, because they assume to restrict immigration before 1808, because they deprive aliens of jury trial, because they unite Legislative, Judicial, and Executive powers. Not only are they unconstitutional, but they are at war with human rights, they promote ignorance, they enlarge executive influence, "and executive influence would produce a revolution." Without these

[192] Taylor to Jefferson, Richmond, 1798. Branch Historical Papers, June 1908, 278.

[193] Journal, 1798-1799, 29.

[194] Journal, House of Delegates, 27.

laws, feared the opposition, there might be "horrid scenes of desolation."

But the immediate question was soon found to involve much in history, law, and current politics. The Common Law of England is the basis of our institutions, declared the one side; not so, shouted the other. The Constitution of the United States is a compact of states, said the followers of Jefferson; friends of Hamilton answered: the Constitution is an emanation of the people. The proper tribunal to decide questions of constitutionality is the Federal Judiciary alone; legislators, it was replied, as well as judges have taken the oath to support the fundamental compact and are in honor bound to uphold it—to declare unconstitutional acts that contravene its provisions. To Federalists, Frenchmen were very dangerous people —they intrigued everywhere they went; and the government must have power to deal with them; only two such men, it was answered, have been shown by any evidence to be dangerous, and they, it is admitted, have sneaked out of the country. Is it necessary "to make the President absolute tyrant over perhaps a million people, to get rid of two?" "Finally," said the Federalists, "the result of adopting the resolutions proposed would be insurrection, confusion, anarchy." Insurrection is certainly not our intention, said the Republicans. We are making a pacific overture to sister states for coöperation in securing a repeal of unconstitutional laws. We are trying to maintain the integrity of our institutions, and that will be productive of peace. Of Giles's efforts in this debate we have only an abstract of one speech. That he spoke on other occasions and had, indeed, exerted much influence on the course of the proceedings we have, however, certain evidence. "When Taylor," says Grigsby in his History of the Convention of 1788,[195] "finished his speech there was a solemn pause for a few moments in the proceedings of the House, when a member rose in his place, who seemed to be in the prime of manhood, and who, elegantly dressed in blue and buff, booted and spurred,

[195] Grigsby, Convention of 1788, II, 328. Grigsby got his account from Tazewell, though he was personally a friend of Giles.

and with a riding whip in his hand, had entered the house just as Taylor rose to speak. He placed his hat upon his knee, and would now and then use the top of it as a resting place for a small slip of paper, on which he would scribble a note . . . Though his fame was diffused throughout the Union, he had never spoken on a great public question in his native state. But on this, as on all subsequent occasions to the end of a long life, when he was called upon to address a public body, his simple and sensible narrative, his clear and plausible reasoning, the tact with which he either spiked the artillery of his opponents or turned its thunders against them, and his familiar knowledge of life and manners in Virginia, from which he mainly drew his illustrations, produeed a great sensation in the House, and abated at once and as if by magic the grave argument and impressive declamation of Keith Taylor." In the one speech of his that is preserved, Giles said he had for several years been observing the systems pursued by the central government and the state governments. The Virginia system was the best and mildest; it had done little mischief and much good. There was no complaint against it of injury to personal property, and yet it possessed less energy than any other government. Energy was despotism, it had produced party distinctions, the bank, the sedition law; the object of the sedition law was the suppression of a certain party. If it be said that the passage of these resolutions proposed would produce evil consequences, these evil consequences would be due not to the resolutions but to the laws. The members of the Assembly were under oath to support the constitution and hence could not throw their responsibility on the people or on the courts. It was their right to speak. For the efforts of the present government tended to monarchy.

Taking up the Adams administration, he declared that its exertions were devoted to inspiring in the minds of the people the notion of energy. He denounced the measures of the administration as to the army and navy and declared the last Congress had left nothing undone to carry us into monarchy —opposition to a foreign power was always "pretence" for

the purpose of usurpation. The resolutions now offered were charged with containing invective. It was not, however, terms that were unpleasant; it was truth. He would be willing to use simpler language if it could be found. "But, he doubted whether should even the Lord's prayer be introduced before them, and undergo a criticism, they could be brought to agree to it." As to the Alien law he claimed that a "stranger coming into a country had a right to protection," and was entitled to trial by jury. For this law there was no cause, either foreign or domestic. If these laws were repealed, "the Government would be as firm as now. The administration . . . was not the Government. The Government could subsist without it." The Constitution was the source of power for the government, not reason and the nature of things. These acts should be declared unconstitutional. Indeed, if members thought they were unconstitutional, it was their duty so to declare them. They had taken the same oath to support the Constitution as had the judiciary. He concluded by moving to omit the word "alone" in the third paragraph; for the national government was both a federal and a social compact.[196]

The resolutions discussed were adopted by the House on December 21, by a vote of 100 to 63, and Giles's name appeared among the 100. Their contents are familiar to all students of history. Having professed a "firm resolution" to defend the Constitutions of the United States and of Virginia, and expressing a "warm attachment to the union of the states," they declared the Constitution a compact and the Federal government a government only of delegated powers. When the bounds of those powers were overstepped, the Constitution was violated. "In case," to quote the resolutions, "of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining

[196] Resolutions of Virginia and Kentucky—and "Debates and Proceedings," etc. Richmond (Robert I. Smith), 1832.

to them." They regretted that "a spirit has in sundry instances, been manifested by the Federal Government, to enlarge its powers by forced constructions of the constitutional chapter which defines them," and to expand certain general phrases . . . so as to destroy the meaning and effect of the particular enumeration explaining them "and so as to consolidate the states by degrees into one sovereignty, the obvious tendency and inevitable consequence of which would be to transform the present republican system of the United States into an absolute, or, at best a mixed monarchy." The Alien and Sedition Acts were denounced as "palpable and alarming infractions of the Constitution" and the other states were called upon to concur in declaring these acts unconstitutional and to take "the necessary and proper measures . . . for cooperating with this state, in maintaining unimpaired the authorities, rights, and liberties reserved to the states respectively, or to the people." To accompany these resolutions an address to the people was adopted, setting forth the arguments for the doctrines enunciated. The minority also adopted a statement of their contentions against the resolutions. Having finished the business of the session, the two parties in Virginia went before the people in a campaign for the next session of the legislature on the issue of the repeal of the resolutions of 1798 and for the choice of members of Congress.

Nothing about "nullification," it will be noted, was said in the resolutions described; a phrase in the original draft declaring the obnoxious acts "null, void, and of no effect" was explicitly rejected; there was nothing about interposition by a single state; and the only practical actions urged were a transmission of the resolutions to the other states and to the Virginia representation in Congress. It is doubtful whether any argument whatever can be deduced from these resolutions in favor of secession. And any use of them to support the doctrines of South Carolina in 1828-32, with little doubt, proceeds from an uncertain interpretation. The recollection of a man as able and honest as Madison is worth much, and he earnestly

combatted the theory that they intended nullification.[197] The correspondence of leaders and the debates of the session seem to indicate that the object was to direct attention to the unwarranted character of the acts condemned, and to effect cooperation on the part of several states in securing the repeal of the iniquitous laws. The measures of redress actually proposed were certanly harmless enough, and there is little evidence that any respectable number of Republicans believed in 1798 that a state could remain in the Union and disobey the national laws, however much legislatures and citizens might give it as their opinion that these laws were unconstitutional.

However, there are some circumstances which seem to indicate that Virginia was not sure that she might not need to do more than resolve and plead with Congress. A paragraph from a speech of Governor Giles in 1827 is suggestive of the feeling of the day. "In 1798-1799," he says in the House of Delegates, "under much more discouraging circumstances than at present, Virginia was again threatened for daring to assert her rights—for daring to resist the Alien and Sedition laws. Her representatives on the floor were threatened with arms—with incarceration. Did they then meanly, and timidly yield to these alarms? No sir! They determined again to regain their rights or perish in their attempt. They went earnestly and systematically to work. The first measure they then adopted was to pass a law to protect them in freedom of debate; requiring the State Judges, in the event of any member being

[197] Letters of 1829-33. Madison, Writings, Congress ed. IV, 204, 357, 358, etc. Madison's opinion at the time is found in Works (Cong. ed.), ii, 149-150. He says because the state is judge of infractions, it does not necessarily follow that the Legislature is. "This was a reason of great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the General Assembly against the charge of usurpation in the very act of protesting against the usurpations of Congress." Letter to Jefferson, December 29, 1798. John Taylor in the debate said his object was to call forth public opinion. For valuable study of the resolutions see Warfield, E. D., Kentucky Resolutions. McLaughlin, A. C., Social Compact and Constitutional Construction (Am. Hist. Review, v, 467) is valuable as an interpretation of the philosophy of the whole Particularistic movement.

imprisoned for words used in debate, to issue a writ of habeas corpus; and to replace the incarcerated member in his place on this floor.[198] They then determined to arm the militia, and to make provision to purchase 5,000 stands of arms. Then it was sir, that the foundation for the regular supply of arms to the militia was laid in the establishment of your armory.[199] To defray the expenses of these measures, they raised the whole taxes of the state twenty-five per cent,[200] with the single scrape of the pen. Backed by these measures, they entered a solemn protest against the offensive laws. These were measures truly worthy of Virginia.

"Did they eventuate in war, in disunion? No sir. They saved the Union—they saved the nation. These measures regained our liberties; and once more, we were free. These measures well deserved success; and they were successful."[201]

Giles himself was among the most radical of the Republicans. Disunion to him did not appear so serious a prospect as it did to Jefferson. In a public letter of February 21, 1799, he expressed himself in the following way:

"As the measures proposed were to be adopted as permanent systems, I would rather see a separation of the Union upon proper and pacific arrangements, than be perpetually subject to all the pernicious consequences, which in my opinion would necessarily flow from them—*I considered disunion as a deplorable event but less deplorable, than a perpetuation of expensive armies, perpetuity of expensive navies, perpetuity of excessive taxes, and all the other oppressive consequences resulting therefrom.*" At a dinner, according to reliable

[198] Act of December 28, 1798. Acts of 1798, 9. Note Jefferson's letter to Rowan, September 26, in which he says; "The habeas corpus secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume."—That is, in Virginia. Ford, Writings of Jefferson, vii, 281.

[199] Act, January 23, 1798. Randolph in 1817 said: "There is no longer any cause for concealing the fact that the grand armory at Richmond was built to enable the State of Virginia to resist by force the encroachments of the then administration upon her indisputable rights." Adams's Randolph, 28.

[200] Acts, January 23, 1799.

[201] Giles, Political Miscellanies—speech in answer to General Taylor, 146.

witnesses, he declared he was "clearly for separation" and hoped it would take place. Another Republican present replied: "I am damn glad old fellow, to hear you say so; it has been my wish for three or four years past. To which answered Giles that belief in the desirability of a separation was a late opinion of his, but he hoped a separation would occur.[202]

Giles, it goes without saying, was a candidate for reëlection to the Assembly, his place in the House having been taken in December, 1798, by Joseph Eggleston, a neighbor and friend. The campaign of 1799 was a memorable one in Virginia politics. Marshall was the leader of the Federalists and a candidate for Congress against John Clopton. Washington himself was unable to keep hands off. Writing to Henry on January 15, 1799, he called attention to "the endeavors of a certain party among us to disquiet the public mind with unfounded alarms; to arraign every act of the administration; to set the people at variance with their government; and to embarrass all its measures," and lamented the leadership of the state of Virginia in the enterprise.[203]. At the earnest appeal of his friends,[204] Henry came forward to throw into the fight his "weight of character and influence" and gave his last public efforts to the support of an expanding government whose formation he had seen with such apprehensions of evil.[205] The Federalists in this campaign usually placed their chief reliance not on the merits of the Alien and Sedition laws, but on the sacredness of the Constitution and on the erroneous and unwholesome character of the compact theory of government.[206] The Republicans, in pamphlets and speeches, stood on the Resolutions of 1798, and denied any desire for the dismemberment of the Union. The veteran Pendleton wrote a series of letters

[202] The dinner took place at Lewis Burwell's, Richmond. Federalists gloated over Giles's confession. See Pickering, MSS., Mass. Hist. Soc. Collections.

[203] Henry's Henry, ii, 601.

[204] Washington in the letter quoted urges him. See also Henry's Henry, iii, 427.

[205] Henry, speech, Henry's Henry, ii, 607-610.

[206] See their pamphlets and Marshall's answer to questions of a freeholder, Ambler, 76. Lodge, Washington, ii, 292.

under the caption "Patriarchal Address," published in Republican papers, and Jefferson urged him to prepare a shorter and simpler edition for the common mind.[207] The most prominent men in the whole state were urged to stand for the legislature. Spencer Roane, March 28, 1799, urged Monroe and Madison to run. This letter to Monroe is interesting because Roane was Henry's son-in-law: "I am," he said, "credibly informed that P. Henry, Esq., has offered himself a delegate from the county of Charlotte, and that there is little or no doubt of his being elected. He has avowed, in a public speech, his design to arrest the progress of the State Legislature in opposing the measures of the general government; which is, as I conceive, to attack the republican cause in its last citadel. You may judge, from my connection with that gentleman, how I am chagrined and hurt by the present aspect of his political opinions: But that regret has given place to an ardent desire on my part, to counteract him, by every means tending to defeat his schemes."[208]

When the election came great interest was exhibited. Washington rode ten miles to cast his vote.[209] Riots took place in Richmond.[210] Returns showed that out of nineteen representatives to Congress, the Federalists had elected five, and had also elected more than a third of the members of the Legislature. Marshall had won in the Richmond district,[211] Lee in Westmoreland—both by small majorities. Madison, Giles, Taylor and other leading Republicans were, of course, returned to the Assembly.

That body assembled on December second. In the meantime, following the adoption of the Virginia resolutions of the preceding December, a number of the states to which they had

[207] Writings of Jefferson (Ford) vii, 337.

[208] See Roane Correspondence, Branch Historical Papers, June 1905, 123.

[209] Randall, ii, 495.

[210] Debates, Virginia Convention, 1829-30, 425.

[211] The election is attributed by William Wirt Henry to Patrick Henry's influence. Henry was reported to be for Clopton. Archibald Blair wrote him, and in answer received a letter favorable to Marshall. This letter was handed around and a Republican district was redeemed. Henry's Henry, ii, 590-594. Henry also wrote a letter for Henry Lee.

been sent adopted resolutions condemning the Virginia doctrines. The day after the Assembly convened came the Governor's message transmitting the replies. They were thereupon referred to a committee composed of Madison, John Taylor, Wise, Giles, George Keith Taylor, Mercer and Daniel.[212] On the seventh, Madison made his famous report,[213] which, after vigorous debate, was adopted in the House by a vote of 100 to 63. Another very important paper was adopted at this session. This was a set of resolutions offered by Giles instructing the Virginia senators in Congress to urge a repeal of the obnoxious laws. A long preamble expressed "the solicitude of the Virginia Assembly for disbanding the army and reinstating the great constitutional principle of national defence"—that is the employment of militia. The act suspending commercial intercourse with the French dominions was denounced as cutting off an important market for Virginia tobacco and in consequence lowering the price of that production of the Old Dominion. Condemnation was bestowed upon the use of "enormous sums appropriated for supporting the army and navy." The creation of a navy was regarded as of delusive value: "a navy has ever," say the resolutions, "in practice been known more as an instrument of power, a source of expense, an occasion of collisions and wars with other nations than as an instrument of defence, of economy, or of protection to commerce."[214] The Alien and Sedition laws had already, in the opinion of the legislature, been shown to be unconstitutional and mischievous in their operation. The senators were therefore instructed not only to secure a repeal of these laws but also to procure a reduction of the army,[215] to prevent any augmentation of the navy, and to promote any proposition reducing it.[216]

[212] Journal, 6. Jefferson had taken pains to see that such a report would be presented. He had Madison at his house, and wrote letters to Nicholas outlining the contents of such a paper. Randall, ii, 509-510.

[213] Note Jefferson's draft of ideas to go in this Report in which he reserved the right of secession for the future. Randall, ii, 509-510.

[214] Compare this with Giles's opinion in 1812.

[215] An exception was made by an amendment adding the words: "unless such a measure shall be forbidden by information not known to the public."

[216] Journal of the House of Delegates, 77.

An analysis of this paper is given at length in order to make clear the philosophy of Giles and Virginia in this period of opposition.

On these resolutions also there was a fierce fight. They passed the House, January 11, 1800, by a vote of 102 to 49.[217] Although few of his words during these years have come down to us, we know enough to realize that Giles was playing an important part in the Legislature and in Virginia politics.[218] The results of the contest in the General Assembly of Virginia were prophetic of the national victory which the party of Jefferson was soon to win.

Before the year 1800 had passed into history, the first political revolution since 1789 had taken place. Republicanism did not rest on its oars because of the victories of preceding years. The victory must be as nearly complete as possible. Giles's name was among the Republican electors in 1800;[219] whether he took any active part in the campaign cannot be shown, but the presumption is that he did whatever he could to promote the general cause. He, no doubt, lost no opportunity to defend his friend and leader against the various unfounded charges brought against him; he also probably deserved some of the credit for the fact that Amelia County cast all of her votes for Republican electors. Only eight counties in Virginia remained Federalist, three in the Tidewater, one in the northern corner of the state, and four west of the Blue Ridge. Norfolk borough held loyally to the faith of John Adams.[220] In the country at large Jefferson and Burr had each received seventy-three votes for the Presidency, eight more than were received by John Adams. The Republicans had won. After a disgraceful effort in the House on the part of the more unprincipled enemies to decide the tie between Jefferson and Burr favorably to Burr,

[217] Journal of the House of Delegates, 83.

[218] For example. The Examiner, August 13, 1803, says the "Assembly of '98 and '99—the names of Taylor, Giles, and Madison, will long be revered by every genuine friend of liberty." Also Enquirer, Dec. 16, 1830.

[219] Virginia Calendar of State Papers, ix, 75.

[220] Virginia Argus, December 2, 1800.

on the seventeenth of February, Jefferson was chosen head of the nation. The farmers of the West and the South, with their middle state allies, had defeated the shipbuilders of New England. And the money power of the nation, monocrats and aristocrats and plutocrats yielded to Democrats and reformers.

CHAPTER VI

REPUBLICAN REFORMATION: WAR ON THE COURTS

On March 4, 1801, Giles saw his distinguished friend inaugurated President of the United States. The day for which chief and follower had been working for ten years had now come. At last Giles stood in the position as counsellor and supporter of an administration of his own faith. Prepared to praise the new President for his achievements and to congratulate him on his success, he nevertheless desired him to walk in the straight and narrow way of Republicanism. And particularly did he desire him to turn out all "obnoxious men" and to save the offices for reliable Republicans, among whom were some of Giles's own friends who deserved recognition. To set forth his views and desires on the subject it is thought well to give in full a letter addressed by him to Jefferson on March 16, 1801:[221]

"Amelia, Virginia,
March 16 1801.

"The President of the United States
Sir

"I sincerely congratulate you on your late election to the Presidential chair; not because personal aggrandizement was ever your object, or is desirable in itself; but because in the most critical period, you have been solemnly called upon by the suffrages of your fellow citizens, to reëstablish American principles, to correct the manifold deviations of your predecessors, and to administer the government according to the original intent and meaning of the Constitution; you have thus become the principal depository of the dearest rights of your fellow citizens and to be instrumental in their preservation and security, must afford the highest of all gratifications; my congratulations therefore result from a sense of the important services, which you can, and which I have no doubt you will render to the Public, and the happiness, which you will necessarily derive from that circumstance.

[221] Original in Jeff. MSS., Lib. Congress.

"I have seen your Inauguration Speech, and am highly gratifyed with its contents. I think the principles proposed for the administration, correct in themselves, happily enforced, and peculiarly adapted to the present state of public opinion. In fact it contains the only American language, I ever heard from the Presidential chair—This I believe to be a very general opinion; But I am still of opinion, that the success of the administration, will depend very much upon the manner, in which those principles are carried into effect. Many of your best and firmest friends already suggest apprehensions, that the principle of moderation adopted by the administration, although correct in itself, may by too much indulgence, degenerate into feebleness and inefficiency. This in my judgment would be a most unfortunate circumstance, which could be attached to the administration, and ought to be more guarded against, than any other. It would produce general and lasting disgust in its best friends, and revive the hopes and enterprises of its enemies, for they are not dead—they only sleep—a pretty general purgation of office, has been one of the benefits expected by the friends of the new order of things—and although an indiscriminate privation of office, merely for a difference in political sentiment, might not be expected; yet it is expected, and confidently expected, that obnoxious men will be ousted. It can never be unpopular, to turn out a vicious man and put a virtuous one in his room; and I am persuaded from the prevalence of the vicious principles of the late administration, and the universal loyalty of its adherents in office, it would be hardly possible to err in exclusions; at the same time I heartily approve of that part of your speech, which recognizes justice, as the right of the minority, as well as the majority. But I believe that justice, would be the most formidable of all terrors, to the description of persons, to whom I allude. It appears to me, that the only check upon the Judiciary system as it is now organized and filled, is the removal of all its executive officers indiscriminately. The judges have been the most unblushing violators of constitutional restrictions and their officers have been the humble echoes of all their vicious schemes, to retain

them in office would be to sanction the pollution of the very fountain of justice, taking it for granted, therefore, that this salutary check will be applyed, and particularly in this state where there has been as gross a violation of the most sacred principles in the administration as can possibly occur, I take the liberty of mentioning to you a neighbor of mine, as properly qualified to fill the office of marshall for this district of Virginia, when the same shall be vacated.

"This gentleman, to whom I allude, is Wm Davis Meade. a Gentleman, who has been firm and uniform in his principles, in the worst of times, of amiable and delicate mind and manners, and who is universally respected by his acquaintances. He is connected to the sister of the present marshall, a lady extremely amiable and universally respected, and permit me to urge the recommendation by one more observation; that the emoluments of the office would be a material aid to Mr. Meade's pecuniary situation.

"I have taken the liberty, when suddenly called on by Mr. Meade, to make this frank communication to you, in the confidence that it will be well received, and duly appreciated. My sole view has been to give some intimation with candor, which I thought it material for you to receive, and I rely with perfect confidence that your desicions respecting them will be correct.

"Be pleased to accept the most ardent wishes for the success of your administration, and assurances of my most affectionate regards for your person.

Wm B. Giles."

The desires of Giles somewhat boldly expressed in this letter were perfectly natural. The Federalists, during the administrations of Washington and Adams, had secured possession of nearly all offices. Capable and patriotic Republicans found themselves uniformly excluded under the principle that any other policy would be "political suicide" for the administration. Republicans had particular right to complain of the appointments made by Adams during his last days of office, appointments of judicial officers made apparently for the pur-

pose of entrenching the Federalists in power.[222] This conduct good Republicans, working faithfully without reward for many years and looking forward patiently to the time of their victory, could not countenance. Many desired a complete overturning. On March 23, Jefferson answered Giles's letter of the sixteenth and laid down his principles in regard to the matter of appointments.[223] "All appointments to *civil* office *during pleasure*, made after the event of the election was certainly known," all office holders guilty of misconduct, and marshals and attorneys of the Federal courts were to be removed. But he hoped by a generous policy in other cases to bring back into the fold those who deserted in the year of X. Y. Z., and by these means to restore "harmony and union" to the country.

In response to the President's request for further views came a letter from Giles dated June 1. He had delayed a reply partly because the contents of Jefferson's letter "so fully explained the principles which would govern your administration, and which were so completely in unison with my opinions on that subject that I had no additional observations to make at that time." However, in order to keep the President up to the mark from which it was feared he might depart, as indeed he had already done, Giles proceeded, "I find the soundest Republicans in this place [Richmond] and throughout the country are rising considerably in the tone which they think ought to be observed by the administration; The ejected party is now almost universally considered, as having been employed in conjunction with G. B., in a scheme for the total destruction of the liberties of the people it is therefore sunk or is fast sinking into utter hatred and contempt. The compleat distress of the party therefore, is the object which all would approve, and many will demand; the only difficulty consists in the choice of the means to effect this object. It is generally believed here that any countenance given to the leaders of that party in any department would tend to improve its execution" and, "under

[222] Bassett, Federalist System, 294. For contrary view see Farrand in in Am. Hist. Review, v, 682.

[223] Writings of Jefferson (Ford), viii, 25. See also letter to Wm. Findley, 26.

that idea," Giles objected to "the continuation of Mr. King in London" and said the nomination of Mr. Pinckney to Spain "is regretted by some of the soundest friends of the administration." What concerned "the thinking Republicans" most was "the situation of judiciary as now organized." "It is constantly asserted that the revolution is incomplete, so long as that strong fortress is in possession of the enemy; and it is surely a most singular circumstance, that the public sentiment should have forced itself into the Legislative and Executive departments, and that the Judiciary should not only acknowledge its influence, but should pride itself in resisting its will under the misapplyed idea of 'Independence'." "No remedy," in his judgment, was "competent to redress the evil, but an absolute repeal of the whole judiciary system, terminating the present offices, and creating an entire new system defining the common law doctrine, and restraining to the proper Constitutional extent the jurisdiction of the courts." In a few days he expected to be in "the federal city" and would be pleased to hear the President's reflections on this subject.[224] The truth seemed to be that Jefferson was too moderate entirely to please the radical section of his party.

Giles, while expressing his harmony with the President in the letter quoted, was, as we have seen, very emphatic about "the compleat distress of the Federalist Party." He did not approve of the continuance of King and the appointment of Pinckney, though he must have delighted in the undermining of his old opponents, Vans Murray and William Smith, and the overthrow of John Adams's son, John Quincy, by the abolition of the missions to Holland, Portugal, and Prussia.[225] He wished also the "absolute repeal of the whole judiciary system." He was, no doubt, among those who had looked forward to a "pretty general purgation of office."

[224] Jefferson MSS., Library of Congress.

Giles had hoped that the Spanish mission would be "dispensed with especially as the Republican party has called attention with particular emphasis to the diplomatic department." Letter of June 1.

[225] John Quincy Adams, however, had already been recalled by his father, Schouler, ii, 12.

Jefferson realized the situation and wrote to Doctor Rush as early as March 24, 1801, "I know that in stopping thus short in the career of removal, I shall give great offence to many of my friends. That torrent has been pressing me heavily, & will require all my force to stand up against; but my maxim is '*fiat justitia, ruat coelum.*' After the first unfavorable impressions of doing too much in the opinion of some, too little in that of others, shall be got over, I should hope a steady line of conciliation very practicable, and that without yielding a single Republican principle."[226] Jefferson "behaved," says one of his biographers, "with a liberality toward his opponents which has never been rivalled by any of his successors, save only John Quincy Adams, and which since the days of Andrew Jackson would be regarded as nothing less than quixotic."[227] Jefferson's plan was wiser than that of such enthusiasts as his friend Giles. "If we can," he said, "but avoid shocking their feelings by unnecessary acts of severity against their late friends, they will in a little time cement & form one mass with us, & by these means harmony & union be restored to our country, which would be the greatest good of all."[228] That policy, in the main, Jefferson carried out. On March 4, 1801, according to Channing, there were 385 officials subject to presidential removal; 183 of them were in office March 4, 1805. When it fell to his lot "to appoint a full set of commissioners of bankruptcy under the act of 1801, he distributed them impartially between Republicans and Federalists."[229] The President's policy proved right —the Federalists were absorbed, though in the process, their principles were absorbed with them. Finally, however, the old Republicans like Giles and John Randolph, and even Jefferson himself saw what had happened and looked upon the situation with alarm.

Thus were matters proceeding when Congress assembled on December 7, 1801, for its first session under the new régime. Many old faces which Giles had seen in Congress in 1798 were

[226] Works (Ford), viii, 30.

[227] Morse, 194.

[228] Letter, August 26, 1801. Works (Ford), viii, 25.

[229] Channing, Jeffersonian System, 17.

no longer present in the basement which now served as temporary quarters. Some of his most prominent friends had been raised by Jefferson to executive position, and his most prominent enemies had been engulfed in the waves of Republican success. In both Senate and House the dominant party now boasted of a majority—in the House of two to one. The Speaker was Nathaniel Macon of North Carolina; the Chairman of the Ways and Means Committee, despite Giles's superior claims, was John Randolph of Roanoke, loved companion of the great North Carolinian and orator in the famous election of 1799 in Virginia. But the leader of the majority on the floor of the House was Giles and his chief opposer, James A. Bayard of Delaware.[230]

The message which on December 8 Jefferson sent to Congress, instead of reading it in person as had been the practice with former Presidents, was conspicuous because of its moderation. It was written, not in the language of a violent revolutionist, but in the words of a cautious and thoughtful reformer. Also significant was its avoidance of anything having the tone of command. He did not order Congress, but in a large way he suggested for their consideration certain broad themes which they doubtless had already in mind. It was in this calm and seductive manner, careful to avoid all appearance of being a master, that he had drawn around him his great party, had held it together, year after year, until he had marched with it to victory. And it was this spirit which was to give him such marked success in directing the work of his administration. Such methods only could succeed in handling followers like Giles, Randolph, and Macon, men often responding readily to suggestion and capable of loyalty but perfectly independent and ready to resent too free a use of the party lash. Announcing that peace had been restored to sister nations and thanking God for the preservation of our own, the President proceeded to describe the insults inflicted on us by the Barbary powers and to ask Congress to consider "whether, by authorizing measures of offense also, they will place our force on an equal footing with that of

[230] Schouler, ii, 20-21.

its adversaries." He recommended economy and retrenchment in army, navy, and civil service, to the end that internal taxes might be abolished. He further recommended a consideration of the judiciary system, "and especially that portion of it recently erected." "A revisal of the laws on the subject of naturalization", so that the number of years requisite for citizenship might be reduced, he thought should be made as an act of justice to "unhappy fugitives" and "oppressed humanity."[231]

Postponing for the present a consideration of all other matters, I will proceed at once to a discussion of that measure in which Giles was most interested. The letters which he had written Jefferson just after the inauguration had, as we have seen, expressed a desire for "an absolute repeal of the whole judiciary system, terminating the present offices." The beginning of that work took place in the Senate, January 6, 1802, when John Breckenridge of Kentucky moved a repeal of the act of February 13, 1801. The Senate on February 3, passed a bill to carry that resolution into effect by the vote of 16 to 15. The Bill came down to the House and Giles became its sponsor. The opposition was defeated in its attempt to postpone the consideration of the subject and the House went into Committee of the Whole. Discussion began on February 16, and continued for a month. Giles's principal speech was delivered on February 18, the strongest, clearest, and most logical of all his arguments in the House of Representatives. Taking a wide range he went back to the origin of parties, and attempted to show the monarchical tendencies of the Federalists. Particularly favored by the circumstances under which they conducted the government, "a vast excitement of Federal fervor" at the beginning of our history as a country, and the fact that during the first two terms of office the "Chief Executive Magistrate possessed a greater degree of popularity and the confidence of the people than ever was, or perhaps ever will be again attached to the person occupying that dignified station," they had built up a system of patronage, a system of dependence on the influence of the wealthy, new forms of taxation and other reprehensible arrange-

[231] Richardson, Messages and Papers of the Presidents, 1, 326 (Dec. 8, 1801).

ments. He accused them, after knowing that their period of rule was over, of attempting to intrench themselves in some part of the government—the judiciary. Hence their bill of 1801. The past administration, which needed an unconstitutional sedition act and arbitrary imprisonment to protect itself against unpalatable criticism, he contrasted with the present executive who needed not such aid but invited inquiry. Taking up the constitutionality of the repeal of the judiciary act, and quoting the clause in the constitution saying judges "shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office," he contended that the office was not the vested property of a judge but was held in trust for the people. The framers of the Constitution did not intend to establish sinecures but expected services from the judges and, the value of these services they left Congress to determine. Furthermore, the power to "unordain or abolish" was a necessary inference from the power to "ordain and establish." He pointed out the consequences of the doctrine that such a law as that now attacked could not be repealed, showed that other attempts like the one now condemned could be made, in a period of party rage, and that a party in power might bulwark itself in new judicial offices to a perpetual increase of judges and salaries. This doctrine that judges could not be removed by destroying their offices would erect the judges "into a body politic and corporate, in perpetual succession, with censorial and controlling powers over the other departments." By claiming to be judges in the last resort on the constitutionality of laws the court had already made unlimited claims to power. The doctrine of the great power of the judges was a doctrine of irresponsibility and despotism, and was an "express avowal, that the people were incompetent to govern themselves." Besides, the judiciary system involved an enormous expense and the extra expense entailed by the act of 1801 was unnecessary. In Virginia when the business had been largest he had never heard the smallest complaint of the inadequacy of the former courts. And it was not to be forgotten that the new system of the Federalists had a tendency "to produce a gradual demolition

of the State courts, by multiplying the number of courts, increasing their jurisdiction . . . bringing federal justice to every man's door."[232]

This speech called down upon Giles the wrath of the opposing party. Bayard, a favorite antagonist, answered in high temper, taking particular offense at Giles's introductory contrast between the two parties.[233] Giles protested he was misrepresented, but though unable to defend himself on account of illness was defended in his absence by John Randolph of Roanoke,[234] who regretted Giles's absence as "he had today lost the triumph which, yesterday, he could not have failed to enjoy; that of seeing his opponents reduced to the wretched expedient of perverting and mutilating his arguments through inability to meet and answer them." This debate throws some light on the position which Giles now had gained in party counsels. One member called him the "*premier* or *prime minister* of the day."[235] There was discussion as to whether members were not unduly influenced by the gentleman from Virginia.[236] Bayard himself spoke of the line of conduct that might have been expected "from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he holds on the floor of this House, as from the professions of a desire to conciliate, which he had so repeatedly made during the session.[237] From the course of this debate, it is plain that Giles had become the House leader for the administration. The older leader, Madison, was now Secretary of State.

[232] Annals, Seventh Cong., 1st session, February 18, 1802. This speech of Giles called forth an essay by Alexander Hamilton. See Hamilton's Works, ed. by H. C. Lodge, vii, 304 and note. In Virginia the speech was circulated in many counties. Particular pains were taken by Federalists to answer it. See Va. Gazette, July 3, 1802.

[233] For an account of this debate unfavorable to Giles and complimentary to Bayard, see Adams's History of the United States, i, ch. xi. It should be noticed that Giles was not the member responsible for the introduction of strong language. See Annals, Seventh Cong., 1st Sess., 530 et seq., 595, and compare Adams.

[234] Annals, Seventh Cong., 1st Sess., 650.

[235] Ibid, 666.

[236] Ibid, 887.

[237] Ibid, 603.

As to the merits of the question discussed in this debate, there seems opportunity for only one opinion. The Act of 1801 had been passed, February 13, 1801, at a time when the result of the election of 1800 was known, when John Adams had but nineteen more days in office, when the contest between Jefferson and Burr was going on in the House. To say that the establishment of new offices on the eve of the first great party change in our history was solely for purposes of efficiency is to be guilty of amazing credulity. Senator Gunn of Georgia had revealed the motive of the Federalists when he said to Hamilton: "If neglected by the Federalists, the ground will be occupied by the enemy the very next session of Congress, and sir, we shall see . . . and many other scoundrels placed on the seat of justice."[238] They likewise provided for the reduction of the Supreme Court at the next vacancy from five to four associates, and created an opportunity to fill the office of Chief Justice by a distinguished member of their own party. The claim that the new court and its attendant offices were necessary for the transaction of the judicial business of the country was met and refuted in the debates;[239] it also is refuted by the additional fact that the arrangement provided by the Republicans in 1802 was sufficient for the legal business of the country till after the Civil War. The Constitutional question seems equally clear—the contention that a court once created cannot be abolished because the judicial officers to whom it gives employment will be displaced, if carried into practical operation, might mean the preservation of a system useless and burdensome to the country, would assume that in this peculiar instance an act once passed by an infallible Congress could never be repealed.

But to the Federalists of the day the conduct of the Republicans meant the wiping away of old landmarks, the ushering in of a horrible era of destruction. It was an evidence of "that spirit of innovation" which had "prostrated before it a great part of the old world—every institution which the wisdom and experience of ages had reared up for the benefit of man." It

[238] Hamilton, Works (Hamilton ed.), vi, 483.

[239] Contrast Adams, History of the U. S., i, 297 and Farrand in American in Hist. Review, v, 682. See Annals, Seventh Cong., 601.

was this spirit which in Europe had "swept before it every vestige of law, religion, morality, and rational government." It made its appearance in Congress on the seventh of December; and behold courts were rooted up; taxes were abolished, the mint destroyed, and the doors of the country thrown open to "outcasts of society."[240] Reformers of all ages have been known by their opponents as "outcasts of society," "desperate innovators" and the like, and the Jeffersons and the Gileses did not escape the usual fate of "forward looking" men.

Interest is added to this controversy from the point of view of a student of Virginia history because several times in the history of Virginia a similar question has arisen. In 1788 the act constituting the High Court of Appeals was repealed and a new court was created. It is true the old judges were reelected but only in regular competition with other candidates for their position.[241] Two men who were present in the General Assembly in 1788, Stevens Thomson Mason and Wilson Cary Nicholas, were members of the Senate of the United States in 1802 and introduced into the debate the precedent to which I have referred.[242] Many years later, in 1829-1830, the same question was to be fought over in a Virginia Constitutional Convention; Giles and John Marshall were to participate in an animated discussion; and the controversy of 1801-1802 was to be reviewed in their arguments.

Another act was passed later in the session rearranging the circuit courts and postponing the next session of the Supreme Court until February, 1803.[243] The postponement may have been for the purpose of preventing the Supreme Court from declaring the act of repeal unconstitutional. The other administration bills received support from Giles. He spoke in defence of the resolution to authorize the President more effectually to protect our commerce against the Barbary powers. Realizing that he had previously been one of the bitterest critics of the policy of founding a navy, he took the position that an emer-

[240] Speech of Henderson, Annals, 530,

[241] Grigsby, Convention of 1788, ii, 192-193.

[242] Annals of Congress, Seventh Cong., 1st Sess., 64.

[243] Act of April 29, 1802.

gency had now occurred and the augmentation of the navy was defensible.[244] He supported the resolution for an inquiry into the accounts of the late Secretary of State, Timothy Pickering.[245] He offered on January 29, the resolution for the abolition of the mint,[246] and on the eighth of February he made a speech in defence of the resolution. He said that he had always been opposed to the mint on the ground that it was not self-supporting. "There is a difference," he proceeded, "between this and other countries. Other nations need to coin their own money; it is not with them the general, but the partial good; it is aggrandizement of individuals, the trappings of royalty. Here, it is true, you established a Mint; you have raised armies and fleets, etc., to create an Executive influence; but what do the people say now? They send men here to govern, who shall not govern for themselves, but for the people."[247] This bill was passed in the House on April 26 but was rejected by the Senate. Giles voted for the fugitive slave bill reported on December 18, imposing a fine of $500 for employing a strange negro without advertising a description of the fugitive in two papers.[248] Although he moved a resolution that the apportionment of Representatives under the new census should be on the basis of one member for every thirty-three thousand people, the ratio in effect since 1791, he soon shifted to his old position and supported the ratio of one to thirty thousand, on the ground of a desire to protect the small states and maintain the confidence of the people.[249] The ratio of one to thirty-three thousand became the law.[250]

One of the most important acts which Giles supported was that of April 30, 1802, allowing Ohio to organize preparatory to admission into the Union as a state. On January 29, he had offered a resolution for the consideration of the propriety of enabling the territory to form a state government and was the

[244] Annals, Seventh Cong., 1st Sess., 327-329, 998.
[245] Ibid, 320.
[246] Ibid, 472, 484, 1237. On the latter page the bill is given.
[247] Ibid, 489.
[248] Ibid, Jan. 18.
[249] Ibid, 325, 334, 338.
[250] Ibid, Appendix, 1301.

chairman of the committee to whom the matter was referred. Taking counsel with Gallatin in regard to the contents of the bill, he made a report March 31, 1802.[251] To Gallatin was due the provision in the act of admission, which set apart one thirty-sixth of the land for the use of schools and provided that one-twentieth of the proceeds of the sale of national land in the state should be devoted, under authority of Congress and with the consent of the states through which they shall pass, to the laying out of turnpikes or other roads from the east to the Ohio River and of roads within Ohio itself.[252] In strange contrast with Giles's later position on internal improvements was that now taken in defence of that policy by this—in days gone by and in days to come—ardent adherent of the doctrines of narrow constitutional construction. "Where measures were devised whose great object was the general benefit, though they might be attended with local advantages, he had no objection to them." He considered the circumstances of connecting the different parts of the Union by every tie as well of liberal policy as of facility of communication highly desirable."[253] The country was placed in a peculiar situation. "We have waters running to the East—they to the West; and the Committee thought it was desirable to connect these by good roads. With the Committee state principles or interests had no influence. They were governed by general principles and the common interest." Federalists, such as Griswold of Connecticut, opposed the provision for internal communication on the pretext that they saw in it a scheme to benefit Virginia and Pennsylvania, and particularly Albert Gallatin, Secretary of Treasury, who had an estate in the western part of Pennsylvania.[254] However, the measure was passed and the name of Giles is honorably associated both with the admission of the first of the states of the great northwest and with the adoption of the policy of internal

[251] Report in Annals, Seventh Cong., 1097.

[252] Adams, Writings of Gallatin, i, 76. Gallatin proposed one-tenth of the proceeds for roads; Congress cut this down to one-twentieth.

[253] Annals, Seventh Cong., 1st Sess., 1124.

[254] Ibid, 1124.

improvements by the national government—a policy against which he devoted the strength of his later years.

The administration party made a successful record, in the first session of their control, in the passage of legislation. They reduced the burden of taxation by an abolition of the excise;[255] they effected the retrenchment of many thousands of dollars by a reduction of army and navy;[256] they provided a sinking fund for the payment of the national debt;[257] they planned a military academy;[258] abolished unnecessary offices and reduced excessive emoluments even at the expense of diminishing voluntarily executive patronage;[259] passed new judiciary laws whose expediency was to be proved by a half century's success;[260] enacted a reasonable and yet sufficiently stringent naturalization law;[261] placed among the statutes a copyright act[262] and other acts of minor importance.[263] The Republicans had kept their promises to the people and had shown themselves capable of an efficiency for which the party of Jefferson, up to very recent events, has not had a conspicuous reputation—though they deserved a better. In the enactment of all these measures, Giles had taken part; with this session was to end his service in the House of Representatives.

On July 3, 1802, there appeared in the Examiner, an administration paper in Richmond, a letter of John W. Eppes to the people of Powhatan, Amelia, Chesterfield, and Goochland, Giles's district, announcing Eppes's candidacy for the House of Representatives. Taking occasion to express his opinion of Giles's ability and position, he says "the distinguished station at present held by Mr. Giles among the republicans of his country, the confidence he has justly acquired by his exertions for years, and

[255] Act, April 6, 1802.

[256] Army Act, May 1, 1802. Navy Act, May 1, 1802.

[257] Act of April 29, 1802.

[258] Act of March 16, 1802, Sections 27 and 28.

[259] For example: Act, April 30, 1802, an act as to compensation of collectors.

[260] Acts, March 8, 1802, and April 29, 1802.

[261] Act of April 14, 1802.

[262] Act of April 29, 1802.

[263] See for a similar review, Schouler, ii, 22-28.

particularly during the last session of Congress, render his retirement a subject of regret, not only to the republicans of his district, but to the friends of that principle, throughout the United States." Coming as this does from the son-in-law of the President, it may be considered as a statement of Jefferson's own opinion. That Giles was missed from Congress is further confirmed by a letter of Monroe to John Taylor dated March 6, 1803, in which he says: "To be candid if I co'd see you and Giles added to the talents we already have in the H. of R., coöperating with the executive in the wise system of policy which is adopted, I sho'd think we were completely secure."[264] The reason for Giles's retirement from the House was ill health: Jefferson, for instance, in a letter of February 13, 1803, to Benjamin Hawkins, wrote, "Mr. Giles is in a state of health found to be irrevocable, although he may hold on for some time, and perhaps be reëstablished."[265] The opposition organs in Richmond, however, attributed it to his and Jefferson's desire that he might succeed Monroe as Governor, and they kept up a running fire of attack on him and the administration during the years 1802 and 1803. Two editors in Richmond had reason for hostility: one was the editor of the *Virginia Gazette and General Advertiser*, Augustine Davis, a Federalist postmaster under Adams who had been dismissed by the incoming administration. The other was James T. Callender, at one time a protégé of Jefferson. He had been condemned under the Sedition Act to suffer the penalty of a fine and imprisonment, from both of which he was relieved by the new President: he had become candidate for the position of postmaster at Richmond, only to be refused by Jefferson because of obvious unfitness. The venom in which he had dipped his pen while denouncing John Adams and the Federalists he now used to poison the slanderous editorials of the *Recorder* against his former benefactor. For Giles, Callender had also peculiar reasons for hatred. That Giles should be made Governor, these men regarded as "giving the office to Jefferson himself." They accused the President

[264] Mass. Hist. Soc., Proceedings, vol. 42, 326.

[265] Jefferson, Writings (Ford), viii, 215. See also Giles to Madison, Jan. 6, 1803, quoted below and one of March 10, 1803, to Daniel Call.

of having removed Colonel Wm. Heth from the office of Collector in order to make room for Mr. Page, Giles's rival for the position of Governor.[266] At any rate, Page was elected Governor and succeeded Monroe on December 1, 1802.

Although doomed to idleness for a time, the restless mind of the fiery politician was busy; he watched the political movements with satisfaction and chafed at the fate which prevented his active participation in national affairs. The following letter to Madison gives a picture of his physical and mental condition in January, 1803.[267]

"Amelia
January 6th 1803

"Dear Sir

"I do myself the honor of enclosing to you a letter of Colo Worthington of the State of Ohio, addressed to me, my object in doing so, is, that the President may be apprised through you of the observations contained therein, respecting the appointment of a district Judge for the State; to which I have, no doubt he will pay due consideration. I regret very much that my state of health should incapacitate me for the discharge of my public duties in Congress during the present session. I had always intended to proceed to the Federal city upon the first relaxation of my complicated complaints; But the inflexible perseverance of the Rheumatic affliction, with which I have been, and still am afflicted, has now put an end to every expectation of that sort. In other respects, however, I think my health somewhat improved.

"But whilst I am sustaining in great pain a reluctant absence from the scene of my public duties; I cannot help congratulating yourself and the President upon the prosperous state of our public affairs in general, resulting from a wise and just administration; and it is matter of real consolation to me, to observe, that the path for Congress to pursue during the present session, is so clearly marked out by the President's message, that no occasion can exist, for any services it would be in my power to render. Amongst the Republicans in this

[266] Virginia Gazette, July 28 and August 18, 1802, also June 29, 1803.
[267] Madison MSS., Lib. Cong.

quarter; the message gives universal pleasure; and even the few Federalists I have seen, appear much at a loss, what points to select, for the commencement of their criticisms.

"Be pleased to present my best wishes and most affectionate regards to the President of the United States & Believe me to be, with every sentiment of the most sincere affection, Your friend etc

"Wm B. Giles"

By the summer of 1804, Giles's health had evidently been reestablished, at least to a marked degree, although he still complained that he was unwell. A place for him in the United States Senate was conveniently made by the resignation of his old friend, Abraham Venable, and on August 11 he was appointed by the Governor and council, United States Senator. In December he was elected by the Legislature for the full term ending 1811. On November 5, he took his seat and without delay advanced to the leadership of the Republican forces in that body.[268]

When Giles was last in Congress, his most conspicuous service was in supporting the act repealing the Judiciary Act of 1801. If there had been reason for Republican attacks on the Judiciary at that time, there was now in 1804 additional reason for such hostility—the conduct of John Marshall. Marshall's appointment by John Adams, when Ellsworth most opportunely resigned, was a severe blow to Jefferson and his party. They had themselves looked forward to Ellsworth's death or retirement and had slated Judge Spencer Roane of Virginia, an enemy of Marshall, and a stalwart Republican, for the office of Chief Justice. Robbed of this expected opportunity by the forehandedness of John Adams, they hoped they might bring about the removal of the new Federalist judicial dictator or render him harmless by restricting the powers of the court.[269] As if to justify their fears and to stimulate their intentions, on Feb-

[268] Giles says—Political Miscellanies, 5—he was elected "without the least intimation of the intention of the Council to confer that honor upon me." For letter of acceptance, see Virginia Calendar of State Papers, ix, 413.

[269] See Am. Hist. Review, xii, 776.

ruary 24, 1803, Marshall handed down the decision in the case of Marbury vs. Madison.[270] In this case, despite the court's acknowledgement of lack of jurisdiction, it first proceeded to examine the legality of Madison's refusal to transmit to Marbury, one of the midnight appointees of John Adams, the commission giving him authority to fill the office of Justice of the Peace of the District of Columbia, and affirmed that such a procedure by the new administration was "in violation of a vested right." But the mandamus from the Supreme Court was, the Court held, not the legal method of redress, for that part of the act establishing the Judiciary which provided that method was unconstitutional, and when a law is in conflict with the Constitution, the court, they claimed, should uphold the Constitution. If Jefferson and his supporters had already chafed at the Judiciary's preposterous claims of authority, what must be their attitude after this decision? The President was wrong, the Secretary of State was wrong, the Supreme Court had gone out of its path so to declare. Federal judges, following the example of state judges who had usurped control over state legislation, were erecting themselves into a dominating tribunal superior to the will of the people. And they were making occasions to do it, and in doing it, were needlessly giving affront to the other departments. The work of reform might now be nullified at any time by judicial officers not in harmony with the needs of the people. Here was a despotic power. Giles was right in his letters to Jefferson in 1801. The reformation was incomplete until the Judiciary had been pruned of some of its presumptuousness.

Three weeks before the decision in Marbury vs. Madison, February 3, 1803, the President had sent to the House complaints against the conduct of John Pickering, district judge of New Hampshire, who, on March 12, 1804, although guilty of nothing but insanity, had been voted "guilty as charged," and removed from office. The same day, decision was made by the House to impeach Associate Justice Chase of the Supreme Bench. When Giles returned to Congress in November,

[270] 1 Cranch, 137.

1804, preparations were in readiness to proceed with this great inquest. In the first week of December,[271] the House agreed to the charges to be made, and on the tenth of December, the Senate adopted the following resolution: "*Resolved*, that the Secretary be directed to issue a summons to Samuel Chase, one of the associate justices of the Supreme Court of the United States, to answer certain charges of impeachment exhibited against him by the House of Representatives on Friday last: That the said summons be returnable the second day of January, and be served fifteen days before the return day thereof."

In this impeachment trial, Giles was naturally interested. Although Jefferson had abstained from bringing it forward by message as he had done that of Pickering, he did so by letter to Joseph Nicholson; and, although before this time John Randolph, manager for the prosecutors, had shown plain signs of an early break with the regular Republicans, yet the trial was an administration affair. For that reason, if for no other, Giles would be zealously interested, and besides he had gone on record in very strong words as an enemy of the Judiciary. As John Randolph considered himself responsible in the House, so Giles looked upon himself as the manager in the Senate. Giles was chairman of the committee to draw up the rules to be observed by the Senate in the trial and during the time was in daily consultation with John Randolph.[272] The task to which he particularly devoted himself was that of securing the acceptance of such a theory of impeachment as would leave the door open for the easy dismissal of Chief Justice Marshall, or any other offending justice. In speeches in the Senate and in conversations with the wavering he elaborated the theory that impeachment was not a trial; the Senate was not a court; impeachment did not rest on crime or misdemeanors committed by the accused. A man whose opinions were detrimental to the interests of the country might be removed by this process. "Impeachment is nothing more," he said, "than an enquiry, by the two Houses of Congress whether the office of any public man might

[271] December 4.

[272] J. Q. Adams, Memoirs, i, 318 (1804, Nov. 29).

not be better filled by another." There was, according to him, no such thing as an independent judiciary. "If the Judges of the Supreme Court should dare, AS THEY HAD DONE, to declare an act of Congress unconstitutional, or to send a mandamus to the Secretary of State, AS THEY HAD DONE, it was the undoubted right of the House of Representatives to impeach them, and of the Senate to remove them, for giving such opinions, however honest or sincere they may have been in entertaining them. Impeachment was not a criminal prosecution, it was no prosecution at all. . . . Removal [of a judge] by impeachment was nothing more than a declaration by Congress to this effect: You hold dangerous opinions, and if you are suffered to carry them into effect you will work the destruction of the nation. *We want your offices*, for the purpose of giving them to men who will fill them better." The Secretary of the Senate could not, according to this view, administer oaths to witnesses, but a magistrate would have to be secured for that purpose. As showing what was in mind in the effort to establish this conception of the non-judicial character of an impeachment trial, he said: "so the assumption of power on the part of the Supreme Court in issuing their process to the office of the Secretary of State, directing the executive how a law of the United States should be executed, and the rights which the courts have assumed to themselves of reviewing and passing upon the Acts of the Legislature in other cases" were impeachable offenses.[273] The influence of this theory on the proceedings is seen, yet the trial was conducted according to judicial forms. But, although the theory advanced by the Virginia statesman is questionable from the point of view of constitutional interpretation, yet the desirability of some process of removal of Federal Judges not chargeable with crime is hardly questionable. The absence of it leads to absurdities such as the conviction of an insane man like Judge Pickering, or the retention in office of some man who obviously, because of unworthy character or insufficient intelligence, is unsuitable for

[273] See Speech, December 20, 1804. Memoirs of J. Q. Adams, i, 321-335. Adams's U. S., ii, 222.

judicial position. According to the British Constitution and the constitutions of Massachusetts and Pennsylvania, at that time, judges were removable by the executive on an address of both houses of the legislative body and for other than indictable offences. In the United States at the present time, state judges everywhere, except in Massachusetts, New Hampshire, and Rhode Island, are appointed for a term instead of for good behavior, and are removable, not only by impeachment, but in many cases by the Governor on an address of the legislature.[274] And in three states[275] a process of judicial recall has been established. The tendency of modern thought is increasingly toward the position of the Jeffersonian Republicans.

In addition to speeches and conversations in regard to the theory to be pursued, there was other work for the vigorous Virginian. The Vice-President would be the judge in the trial and unfortunately the present incumbent was unfriendly to the prosecutors. An effort was made to win his favor. Relatives of his wife and his friend, James Wilkinson, were presented by the President with good offices, and Giles took it upon himself to circulate a paper among senators petitioning the Governor of New Jersey to throw out an indictment against Burr in the county in which the duel against Hamilton had taken place. These caresses seem to have accomplished their purpose; for John Quincy Adams, always on the alert for details of such a character, reports that the Vice-President was partial to Giles even to the extent of allowing him once to speak three times.[276]

Giles was no doubt desirous of the conviction of Chase, and had prejudice against the Judiciary; he did have extraordinary relations with John Randolph, manager, but he did not allow these things to prevent his judging the case with fairness. If the prosecutors of the Justice desired success, they had grievously erred in the multitude and character of the charges which they had brought. The incident which had inspired the trial was the charge made by Chase on May 2, 1803, to the grand jury at Baltimore. Departing from the dignity of the judge,

[274] Baldwin, American Judiciary, 341.

[275] Oregon, California, and Arizona.

[276] Memoirs, December 24, 1804, 325.

though following the practice of the day, he had taken occasion, before the jury had retired, to deliver to them a political harangue, replete with reflections on the administration. After picturing the free condition of the people "where justice is impartially and speedily administered," he had proceeded to say: "where law is uncertain, partial, or arbitrary; where justice is not impartially administered to all; where property is insecure, and the person is liable to insult and violence without redress by law, the people are *not free*, whatever may be their form of government. To this situation, I greatly fear, we are fast approaching. You know, gentlemen, that our state and national institutions were framed to secure to every member of the society equal liberty and equal rights; but the late alteration of the Federal judiciary by the abolition of the office of the sixteen circuit judges, and the recent change in the state constitution by the establishing of universal suffrage, and the further alteration that is contemplated in our state judiciary (if adopted) will, in my judgment take away all security for property and personal liberty. The independence of the national judiciary is already shaken to its foundation, and the virtue of the people can alone restore it."[277] That a Justice of the Supreme Court of the United States should so far forget himself or misuse his opportunities, as to denounce from his high seat the action of the other two coördinate branches of the Federal Government, the action of the people of the state of Maryland in changing their constitution, and also use his influence against an alteration then under consideration in that state, was reprehensible to a marked degree, and was evidence of unfitness for the high dignity which he held. But, not content with resting their case on this incident, the House managers went back to 1800 to the trials of John Fries and James Thompson Callender, now an old story, and, besides, dragged in certain alleged errors in rulings made from the bench.

In the conduct of the trial there was inconsistency and contradiction among the managers as to the theory of impeach-

[277] Annals, Eighth Cong., 2nd Sess., 674. Trial of Judge Chase, exhibit eight.

ment, and John Randolph, the chief manager, unprepared and nervous, could hardly continue his final argument to its legitimate conclusion.[278] When, on the twenty-eighth of February, the form of the question to be put was under discussion, Giles, still upholding his theory of impeachment as described above, yet on the ground that the actual offenses charged in this present case were high crimes and misdemeanors, agreed that the question should read "Is Samuel Chase guilty or not guilty of a high crime or misdemeanor, as charged in the article" just read? When the vote was taken he, with the majority of Senators, voted against the prosecution in four items out of the eight. Wherever he voted for conviction, except in the case of the second article, he voted with the majority. One of the charges, the eighth article, which had reference to the speech before the grand jury at Baltimore, might have been sustained by the necessary two-thirds majority, had the managers rested their case exclusively on it and left out charges whose only effect was to irritate, to weaken, and to alarm as to the consequences of a favorable vote. When the question of payment for the witnesses arose, Giles refused to consent to a distinction between those for the prosecution and those for the defence, insisting on payment for both by the United States, and won from Adams the praise of being "firm and correct."[279]

The only other act of this session in which Giles seems to have been much concerned was an act further providing for the government of Orleans. This act he presented and carried through the Senate. It became a law March 2, 1805. By an act passed during the preceding session,[280] the southern part of the Louisiana Territory became the territory of Orleans, under a government similar to that provided in the ordinance of 1787, as the first territorial stage for the northwest. Fifty thousand people, however, lived in Orleans, whereas the Northwest Territory in 1787 was almost destitute of inhabitants. Their governor and council were appointed by

[278] See Trial of Chase.

[279] J. Q. A. Memoirs, i, 372. Also interesting letters in Adams Transcripts, vol. ii.

[280] U. S. Stat. at Large, ii, 283.

the President. These made the laws. The Supreme Court was also composed of Presidential appointees. On the thirty-first of December, 1804, Giles had presented a petition from "planters, merchants and other inhabitants of Louisiana," remonstrating against certain laws which controverted their rights. Stating their grievances in stirring language, claiming that they were not "incorporated into the United States," as was promised in the treaty that they should be, they prayed that "so much of the law above mentioned, as provides for the temporary government of this country, as divides it into two territories, and prohibits the importation of slaves, be repealed. And that prompt and efficacious measures be taken to incorporate the inhabitants of Louisiana into the Union of the United States, and admit them to all the rights, privileges, and immunities of the citizens thereof."[281] The act of March 2, 1805, conceded to the inhabitants of the territory of Orleans, the privilege of electing at once a General Assembly to make their laws. When the population should amount to 60,000, they should be authorized to form a constitution and to claim admission into the Union.

[281] For the "Remonstrance" see Annals, Eighth Cong., 2nd Sess., 1597.

CHAPTER VII

MONROE'S TREATY AND THE BURR TRIAL

The Eighth Congress ended March 3, 1805. But Giles was not able to return to the Senate until December, 1806. In addition to the renewed suffering from his rheumatic disease, on his way to Washington, late in 1805 or early in 1806, he was thrown from a carriage. His leg was fractured and knee injured "to an extreme degree," so much so that he was "reduced to the use of crutches" and was "scarcely able to hobble in a miserable manner without them."[282] He regretted being deprived of his "share of responsibility in the measures to be adopted by the Government in the present delicate crisis of our public affairs."[283] To this his distinguished friend replied "we learnt here with real affliction the terrible calamity which happened to you. To our feelings for your personal sufferings were added those for the public want of you here. For the importance of the matters before Congress, & some unfortunate circumstances, your presence here would have been, & would still be of incalculable value to the nation."[284] And again he said to others that Giles's absence had been "a most serious misfortune."[285] But, in the interval, there was service which the cripple could render. John Randolph, who as early as December, 1800, had begun to talk of Republican Monocrats, and a few months after the inauguration of Jefferson, expressed his disappointment at practical results,[286] had now for two years given signs of a break with the administration. Angered against Madison because of his connection with the Yazoo claims, disgusted at the departure of the Republicans from their pure principles of 1798, mortified by the ignominious breakdown of the Chase trial and at Giles's action in the payment of wit-

[282] Letter to Monroe, March 4, 1807—Monroe MSS., Lib. of Cong.

[283] Jefferson MSS., Lib. of Cong.

[284] Jefferson to Giles, Feb. 23, 1806, Jefferson MSS., Lib. of Cong.

[285] Writings (Ford) VIII, 435.

[286] Correspondence with Joseph Nicholson, Adams Transcripts.

nesses, he had on March 5, 1806,[287] delivered a bitter criticism of the executive and the cabinet. He soon declared himself no longer a Republican but a member of a third party of *quids*.[288] He followed a policy of denunciation and obstruction until he had disgusted his supporters and thrown the administration "into the hands of the northern democrats."[289] Giles had been as we have seen, on very friendly terms with the eccentric leader; but, although himself unsympathetic with the views of the administration as to the Yazoo claims,[290] yet he felt that an attack on the administration was an attack on him and he was ready to be of service to remove Randolph from a position in which he was an embarrassment. Hunting around, he found an old enemy of his own in Randolph's district, Creed Taylor, and proposed him for Congress. And, in order to defeat his former friend, he exhibited a confidential letter received from Randolph.[291] But the disaffected statesman of Roanoke continued to stand in the graces of his constituents, who returned him to Congress regularly until 1813. To that body Giles himself came back in December, 1806.

The Second Session of the Ninth Congress was, according to Giles, "the most harmonious session in the Senate, that has taken place since the commencement of the government." Party was nearly, according to him, at an end in that body; and subjects were generally discussed and considered merely in relation to their intrinsic merits unaccompained by any collateral sensibilities—the House of Representatives, was occasionally agitated by variable squalls and whirlwinds, defying all system and consistency. This was attributed, however, "more to the capricious sensibilities of a few individuals, than to the designs or views of the general mass."[292] A consultation of the Annals for

[287] Annals, Ninth Cong., 1st Sess., 561, 572. Adams's Randolph, 174-178.

[288] Adams's Randolph, 181.

[289] Ibid, 184-189.

[290] In a letter to Randolph, Feb., 1806. (Substance given in statement of Leigh mentioned below).

[291] Letter of John Randolph to Nicholson, Adams's Randolph, 198. Also Memorandum of Benjamin Watkins Leigh in Library of Virginia Hist. Society.

[292] Letter of Giles to Monroe, March 4, 1807.

the session bears out this statement, certainly as far as the Senate is concerned. In regard to the character of the debates, it is impossible to be certain in the absence of full reports of the speeches delivered, but measures desired by the administration were usually carried through without the necessity of a division. The President's message regretted delays in securing satisfaction in our negotiations with Great Britain and Spain, mentioned in general terms the operations of Burr, and suggested measures for the prevention of enterprises prepared by our citizens against the United States, reported satisfactory conditions among the Indians, commended the expeditions of Lewis, Clark, and Pike, and offered congratulations "on the approach of the period at which you may interpose your authority constitutionally to withdraw the citizens of the United States from all further participation in those violations of human rights which have been so long continued on the unoffending inhabitants of Africa," suggested a suppression of the duties on salt, and recommended a continuation of the Mediterranean fund, and an extensive system of internal improvements and national education as being proper objects—provided that a constitutional amendment authorizing them should be adopted—for the expenditures of the surplus in the Treasury.[293] The day after the reception of this message, a temporary suspension of the act of last session prohibiting certain importations was recommended "on consideration of justice, amity, and the public interests."[294] The particular items of the message were referred, as usual, to the select committees. Giles was appointed on the committees on fortifications, non-importation of slaves, and was made chairman of the committee as to laws respecting insurrections, on the suspension of the non-importation act, and on the repeal of the duty on salt. The first of these recommendations to become law was that desiring the suspension of the non-importation bill. An effort was made in the House to extend the suspension to December 21, 1807. This failed, and the bill as it came from the House

[293] Richardson, Messages and Papers, i, 405.

[294] Ibid, 411.

suspended the act to July 1. By a Senate amendment, the President was, in addition, given authority to suspend it to the second Monday in December of the next year.[295] The duty on salt was repealed and the Mediterranean fund continued as the President had requested.[296] The President's recommendations for the passage of an act forbidding the importation of slaves provoked such an interesting debate in the House and was a subject in which Giles was so much interested in later years that it is much to be regretted that his speeches in the Senate on this subject are not preserved. It was the Senate bill, however, which became a law, and at least part of that bill was written by Giles.

The discussion ranged around three important points in the House and presumably there was interesting debate on these same questions in the Senate. What should be done with the negroes seized from violators of the law? Some southerners, like Early of Georgia, who reported the House bill, wished them forfeited to the Government and sold by it. Others wished them freed. The decision of the matter was to leave the negroes to the disposition of the states wherein they were captured. For this provision Giles claimed to be responsible, and of it he was very proud. For all time, he later asserted, this provision had placed the control of slavery in the hands of the legislatures of the states and territories. Not uninteresting is it to find him rejoicing that the legislatures of the territories of the United States had absolute control of this purely domestic institution.[297] Surely he saw but dimly into the future—in 1858 would he not have held with Jefferson Davis as against Stephen A. Douglas, and with the Dred Scott decision as against the Republican platform?

The severity of the penalty to be imposed for violation of the act was another question at issue. The House was successful in the substitution of fines and imprisonment for the death penalty as proposed by the Senate. John Randolph argued against fines and imprisonment "on the ground that such an

[295] Annals, December 12 (Senate), Act of December 19.
[296] Act approved March 3.
[297] Proceedings and Debates of Virginia Convention, 1829-1830, 246.

excessive penalty could not, in such cases, be constitutionally imposed by a government possessed of the limited power of the Government of the United States.[298] The third point of dispute was the manner in which interstate coastwise trade should be prohibited. The Senate proposed its entire prohibition. After disagreement of the two Houses, the conference committee devised a compromise prohibiting the coastwise transportation of slaves, with a view to sales, in vessels under forty tons burden.[299] Even this compromise brought forth the dramatic efforts of John Randolph, and his tragic declarations that he had "rather lose the bill, he had rather lose all the bills of the session, he had rather lose every bill passed since the establishment of the Government, than agree to the provision[300] contained in this slave bill. It went to blow up the Constitution in ruins."[301] The House, however, accepted the provision and passed the law. Only five men voted against it—two of them were from Virginia.[302] If John Randolph, in the quotations given from him in the preceding paragraph, was radical and violent, yet his expressions carried with them a significance. There were those who did not wish the slave trade abolished; indeed, there was a modicum of truth in the assertion of Early,[303] even at that time, that "a large majority of the people in the southern states do not consider slavery as even an evil." Had the law provided for freeing the slaves illegally imported, as moderate a man as Macon was ready to declare it could not be executed.[304] In due time, however, the states passed laws for the enforcement of the act. Virginia had already directed slaves imported within her boundaries to be delivered to the overseers of the poor and sold for cash, and had imposed a

[298] Annals, Ninth Cong., 2nd Sess., 484.

[299] Annals, 626. Schouler, ii, 144. Dubois, Suppression of the Slave Trade, 102. Act approved March 3, 1807.

[300] The coastwise provision.

[301] Annals, 626.

[302] Garnett and Trigg. The others were from South Carolina, Vermont, and New Hampshire. The opposition of each was, however, due to questions of detail.

[303] Annals, 238.

[304] Annals, 173-174.

penalty of $400 for each slave brought in.[305] But the famous act of 1807, passed as I have just described by the Congress of the United States, was very ineffectively enforced.[306]

An act was passed at this session authorizing the President "in all cases of insurrection, or obstruction to the laws," where it is lawful to call out the militia to suppress insurrections, to employ "such part of the land or naval force of the United States, as shall be judged necessary."[307] In the meantime, in accordance with a resolution of the House of Representatives, the President sent to the two Houses on January 22, a full statement of the history of the Burr conspiracy, as he understood it to be, and of his own conduct in the premises. From the information received, it appeared to the President that Burr had two objects "which might be carried on jointly or separately;" one was "the severance of the union of these states by the Allegheny Mountains; the other an attack on Mexico." Having narrated the history of events as he knew them, he added that one of Burr's emissaries had been liberated by *habeas corpus* and that two others were on their way east and would be handed over to the courts for action. That the Supreme Court Judges would be in Washington in a few days, was a fact worthy of mention in this connection.[308]

On the following day this message, on motion of Giles, was referred to a committee composed of himself, John Quincy Adams, and Samuel Smith, with a view of inquiring into the expediency of suspending the privilege of the writ of habeas corpus.[309] Before adjournment for the day, a bill was presented by this committee to the Senate, rushed through under suspended rules, and sent over to the House. The bill provided that "in all cases, where any person or persons, charged on oath with treason, misprision of treason, or other high crimes or misdemeanor, endangering the peace, safety, or neutrality

[305] Act passed January 25, 1806. Statutes at Large of Virginia (new series), iii, 251. A milder act had been passed in 1792.

[306] Dubois, Suppression of the Slave Trade, 160, et seq.

[307] Act approved March 3, 1807.

[308] Richardson, Messages and Papers, i, 412 (January 22, 1807).

[309] Annals, Ninth Cong., 2nd Sess., 44.

of the United States, have been or shall be arrested or imprisoned . . . the privilege of the writ of *habeas corpus* shall be, and the same hereby is suspended, for and during the term of three months from and after the passage of this act, and no longer."[310] Without the formality of passing through the ordinary forms of procedure, the bill was rejected on its first reading in the House on the very day of its reception, January 26, on the grounds that the emergency contemplated in the Constitution, a danger to public safety, did not exist, and further, that it was, so far as it related to persons arrested, really an *ex post facto* law. The vote against it was 113 to 19, one of its strongest opponents being John W. Eppes, the President's son-in-law.[311]

A few days after this, the Supreme Court, on whom the President in his message had expressed his reliance, released on a writ of *habeas corpus*, Swartwout and Bollman, emissaries of Burr. So angry was Giles that he threatened to bring forward a motion taking away all jurisdiction of the Supreme Court in criminal cases.[312]

But, before the question of Burr became a matter of history and before the adjournment of Congress, the President had received from Monroe, minister to England, and William Pinkney, special envoy sent during the spring to aid Monroe, a treaty which these gentlemen had finally secured from Great Britain. Instructed to negotiate an instrument which should bind the British to abandon the impressment of American seamen, which they had continued to do of late, to restore the West Indian trade to the position which it occupied when Jefferson became President, and to secure indemnities for the captures made under an admiralty decision in 1805,[313] Monroe and Pinkney, after futile negotiations, had agreed to a treaty which all but ignored the instructions on the first two points.

[310] Annals, Ninth Cong., 2nd Sess., 402.

[311] Ibid, 403.

[312] Adams, Memoirs, i, 459.

[313] The latter was not named as absolutely indispensable but refusal of Great Britain to yield would be "a painful impediment in the negotiations." Am. St. Papers, For., iii, 122.

The West Indian trade was, however, allowed under certain conditions. But after the treaty was agreed to, but before it was signed, a note was presented to them by the British negotiators stating that promise of resistance to Napoleon's Berlin decree by our government would be a necessary condition to the English ratification.[314] The treaty was received by the President on March 3. How it was received by him and regarded by the Virginia Senator is told in a letter to Monroe by the latter dated the following day: "The President of the United States was last evening furnished with a copy of the treaty lately concluded between the commissioners of U. S. and G. Britain, together with the declaratory or explanatory note on the part of the British Commissioners. The contents I have not seen; but the substance has been informally communicated by the President without reserve; and it would give me great pleasure, to have it in my power to assure you that they were acceptable to the government and people of this country. But this is not the fact. The obvious tendency of the explanatory note, and the silence respecting seamen, have excited universal disappointment and astonishment. The High and unabated confidence in our commissioners, forbids any conclusive opinion on this subject, until their own inducements for consenting to such a measure shall be known; But without this information, I can assure you, that the views and opinions respecting our foreign relations, are extremely different from those which must have influenced our commissioners. The only party here in favor of making a common cause with G. B. or taking any part whatever in the war, until absolutely forced to it; is the mere Anglican party, accompained by a few wildly eccentric men, who have no influence whatever, and are considered generally as men of disordered imaginations. They are totally destitute of influence, and destroy every person or object they endeavor to support. It is feared that some of the wild effusions of some of these men, have been mistaken by our commissioners for indications of the public sentiment."

[314] Am. St. Papers, For., iii, 152.

Although Congress was still in session when the treaty was received, the President, instead of submitting it to that body, returned it to the American commissioners.[315] "Take out the eleventh article," wrote the President, "and the evil of all the others so much overweighs the good, that we should be glad to expunge the whole." Monroe might come home, receive the governorship of Orleans, "the second office in the United States in importance," and, unless the treaty could "be put into acceptable form," the negotiation should be allowed "to die away insensibly."[316]

In the meantime the scene of interest had shifted from the capital of the United States to the capital of Virginia. During the month of March, Burr arrived in Richmond ready to stand trial. Entertained at dinner with the chief justice who was to preside at the trial, lionized by Federalists, so commodiously imprisoned that he could offer his daughter a parlor and bedroom with three large closets, the recipient of messages, and delicacies, and visits by "friends and acquaintances of both sexes," the former vice-president appeared to be rather the hero of patriotic exploits than the prisoner charged with treason against the United States. When the grand jury was summoned, the names of W. C. Nicholas and William B. Giles were found on the list. To them, naturally, Burr objected, to Nicholas as having entertained a bitter personal animosity against the prisoner, and to Giles as having been the author of the bill for the suspension of the writ of *habeas corpus* and having on other occasions expressed his opinion. Disclaiming any resentment against Burr and protesting he could receive without prejudice judicial evidence, Giles expressed a willingness to withdraw, and, on the advice of the Chief Justice, did so.[317] Giles's interest in the case, however, is clearly seen from the following letter written to Jefferson about ten days after the

[315] Jefferson was sharply criticized by some regular Republicans—e. g. General Samuel Smith, who wanted to go to London himself as envoy extraordinary, complained that the President had acted with insufficient delicacy. Smith to W. C. Nicholas, April 1, 1806 and March 4, 1807. Nicholas MSS. (Transcripts by Henry Adams).

[316] Randall, iii, 201.

[317] Proceedings of the Trial, 15 and 16.

examination of Burr by Judge Marshall preliminary to his admission to bail.

"The late enquiry into the charges vs Colo Burr, has excited a very great degree of sensibility in this part of the country and probably will have the same effect in all parts of the United States. The real friends of the administration are universally anxious for a full and fair judicial investigation into his conduct, and rely with great confidence upon the executive for taking all measures necessary for effecting that object. The new, as well as the old opposers of the administration, are anxious to smother the investigation, and have already suggested doubts respecting the measures heretofore pursued in relation to Burr; and intimate that the executive are not possessed of evidence to justify those measures, or if they are, that they have been extremely delinquent in not producing it at the examination. It is even said that General Wilkinson will not be ordered to attend the trial. I hope and trust that this is not the fact; because I am confident that such an omission would implicate the character of the administration, more than they can be apprised of. Indeed, I do not see under such circumstances; upon what ground the administration could be justified by its real friends. The necessity of Wilkinson's presence with the army would not be received as an apology by any party in this part of the country. Besides, I think Wilkinson's own character will be seriously affected by his absence; and of course it would be unjust to him. Probably, too, measures contemplated in relation to his late military proceedings would receive considerable impression from that circumstance. These considerations, I am confident cannot receive too much of your attention."

Into the story of this trial it is not necessary for my purposes to enter. The appointment of John Randolph, bitter enemy of the administration, as foreman of the grand jury, the extraordinary conduct of the presiding justice in issuing a *subpoena duces tecum* requiring the President to appear with certain documents and letters, the attacks of the defendant's attorney on the administration, Jefferson's eagerness for the

conviction of Burr, the final discharge of the accused—all these constitute a drama of judicial and semipolitical contest seldom equalled in America. One result of the proceeding was a further estrangement of the Supreme Court and the Executive and the increased desire on the part of the leading Republicans to strike down this overweening and dangerous usurpation of the judiciary.

CHAPTER VIII

THE CHESAPEAKE OUTRAGE AND THE TREASON BILL

While the Burr trial was going on, an event of much importance took place, destined to have a bearing on our very delicate relations with England. On June 22, our ship Chesapeake, on her way to the Mediterranean, left Hampton Roads. Out from Lynnhaven Bay, where it had been lying, came the British ship, Leopard, and, approaching the American vessel, hailed for the purpose of delivering dispatches to Commodore Barron on board the Chesapeake. The dispatches were nothing less than an order from Vice-Admiral Berkeley at Halifax directing the captains and commanders of his majesty's ships and vessels "in case of meeting the American frigate 'Chesapeake' at sea" to search it for deserters reported to be on board. Receiving no satisfaction from Barron, the commander of the Leopard opened fire, killing three men and wounding eight. Four men were taken from the ship, three of them were compelled to reënter British service and the other was executed. Among all the injuries suffered by American honor during the whole shameful period of English and French depredations, none equalled this in shamefulness, in none had the British shown such effrontery. Not an ordinary merchantman on the high seas but an American man of war in sight of our shore was compelled to submit to the will of a British crew. Intense feeling immediately flared up. The cities of Norfolk and Portsmouth passed resolutions discontinuing relations with the British ships, providing for the appointment of a committee of correspondence, for the subscription of a fund for the wounded and for the families of the killed, pledging their lives and property to the government in measures of vengeance and retaliation.[318] The Governor of Virginia, W. H. Cabell, ordered out

[318] Enquirer, June 27.

the militia.[319] Meetings were held in many places[320] and resolutions adopted denouncing the outrage and expressing confidence in the executive. At one of these meetings held July 11, at Amelia Court House, Giles presided and the following resolutions were adopted:[321] "*Resolved, unanimously*

"That this meeting consider the attack on the Frigate Chesapeake, as the commencement of a war on the United States by the British government, and entered into with every circumstance of perfidy and aggravation which is calculated to excite our feelings, and unite us in resentment against that nation. That in a government like ours, where no artificial distinctions exist, the murder of one citizen ought to excite the serious and effectual resentment of the government. That any farther attempt to negociate with the faithless and corrupt government of Britain, previous to her making the most satisfactory concessions for her late outrage, would be derogatory to our national honor and independence. That this meeting has full and entire confidence in the Executive and other constituted authorities of the United States, and that we are ready and willing to support them, in any measures they may think proper to adopt, in this present awful crisis, and to that end, we do now pledge our lives, and fortunes and our sacred honor.

"That this meeting are greatly pleased at the unanimity which prevails among every description of citizens in our towns, and they highly approve the feelings and sentiments expressed at Norfolk, Richmond, Petersburg, etc. and whilst their exposed situation may subject them to greater and more immediate calamities than the inhabitants removed from the water, they consider that their conduct on that account merits and demands from their fellow-citizens in the interior, every aid

[319] See Enquirer, July 28.

[320] See Enquirer, July 1-July 24, 1807. The following are some of the places where meetings were held: Hampton, Richmond, Fredericksburg, Petersburg, Manchester, Alexandria, Lynchburg, Bent Creek, Port Royal and the following Court Houses: Albermarle, Powhatan, Caroline, Westmoreland, King and Queen, Amelia, Louisa, Fluvanna, Orange, Cumberland.

[321] Enquirer, July 21, 1807.

and comfort which they may require during the progress of the conflict."

Urged to declare war at once, or at least to call an immediate session of Congress,[322] the President waited and allowed the warlike disposition of Congress to decline in fervor. Meanwhile he dispatched a vessel to England to demand reparation and on July 2, in a proclamation ordered British ships out of American waters. New York, New Orleans, and Charleston were put in a state of defence and preparations were made for calling out the militia. Apology was promptly made by the British government, but the proclamation of July 2 was not relished, reparation was not to be conceded until 1811, and refusal was made to couple the question of the Chesapeake with the general question of the impressment of our seamen.

Before further developments were known in the country, Congress had, on October 26, assembled by special call of the President.[323] On the following day, the message was received.[324] Softened by the moderate suggestions of Gallatin,[325] it recited the events in our relations with Great Britain since the departure of the extraordinary mission to London. The attack on the Chesapeake and the President's action as narrated above were described, and, in addition, mention was made of the order in council dated January 7, 1807, and the seizures made under its regulations. Relations with Spain were described as unsettled and a decree of hers in harmony with Napoleon's Berlin decree was spoken of as an additional ground of complaint.

[322] By W. C. Nicholas in letter of July 7, 1807, Jefferson MSS., Lib. of Cong. Nicholas said: "I am so deeply impressed with this subject, that if I directed the affairs of this Country I would instantly employ force to avenge the injury that has been done us, I would not ask but take satisfaction . . . If we submit to such indignities and injustices, we should become contemptible in the eyes of the whole world, and what is much worse in our own. There is no spirit which ought to be cherished with so much care by those who govern a young country as national pride and a regard to national honor." See also sentiments of Gallatin and Robert Smith. Adams's Gallatin, 358. Letter of Smith to Jefferson, July 17, 1807. Adams Transcripts, vol. iii.

[323] Richardson, Messages and Papers, 1, 424.

[324] Ibid, 1, 425.

[325] Adams, Gallatin, 363.

On account of the conditions named, the states had been asked to hold their militia in readiness and the acceptance of volunteers encouraged. "Whether a regular army is to be raised, and to what extent, must depend on the information so shortly expected."

In addition to an account of our foreign relations, the proceedings of the Burr trial were laid before Congress and that body might "judge whether the defect was in the testimony, in the law, or in the administration of the law; and wherever it shall be found, the Legislature alone can supply or originate the remedy." Finally, the encouraging state of the treasury was described. Giles did not attend the session of Congress until January 7, 1808, and before his arrival various acts making appropriations for defense were passed, and, on December 22, an act was placed on the statute book with which he was later to have much to do. A special message of the President communicated the king's proclamation of October 17, requiring the complete enforcement of the right of seizure, made known the decision of Napoleon to enforce against us the Berlin decree, and recommended an act placing an embargo on our shipping. Information received, but not officially, of the British order in council dated November 11, 1807, was the real cause of the message.[326] Congress was so well in hand that on the day of the message the Senate passed an embargo bill and in four days thereafter it became a law.[327] Before the session ended three supplementary acts were passed prescribing penalties for violations of the embargo and making evasion more difficult for coasters. Also discretionary power was given the President to suspend the laws during the vacation of Congress.[328]

With these matters Giles had little to do. But it was thought best to make a statement of them at this place preparatory to a discussion of his relation to the restrictive policy at the next session. With another portion of the annual message of the President, he was, however, deeply concerned—that portion which had referred to Congress a consideration of the

[326] National Intelligencer, December 18.
[327] Act, December 22.
[328] Acts, January 9, March 12, April 22, and April 25.

evidence taken in the Burr trial. On the twenty-sixth of January, Giles was made chairman of the committee who were to deal with that part of the message and on February 5, reported a bill "for the punishment of treason and other crimes and offences against the United States." The first section declared "that if any persons owing allegiance to the United States of America, shall levy war against them, by assembling themselves together with intent forcibly to overturn or change the Government of the United States, or anyone of the Territories thereof, or forcibly to dismember the said United States, or anyone of them, or anyone of the Territories thereof, or forcibly to resist the general execution of any public law thereof, or forcibly to take possession of, or hold any fort, magazine, dock, navyyard, or of any public vessel of the United States, or to forcibly invade or hold any port of the United States, or of the Territories thereof, against the authority of the United States, or if any person or persons shall traitorously aid or assist in the doing anyone of the acts aforesaid, although not personally present when any such act is done or committed, and being convicted of anyone or more of the aforesaid acts, on confession in open court, or on the testimony of two witnesses to the same overt act of treason, whereof he or they may stand indicted, such person or persons shall be judged guilty of treason against the United States and shall suffer death."[329]

To say the least, it will be admitted that the terms of this bill were sufficiently strong and definite for the punishment of what was thought to be the scheme of Aaron Burr or of the secessionists of 1860 or of any other body of men guilty of anything having the appearance of levying war on the United States. Giles, in 1828 and 1829, was advocating a plan which his bill of 1808 would have fitted perfectly. Opposition to the measuer at once appeared and rested on the following grounds: admitting the unsettled condition of the law of treason, to the courts and not to Congress belonged the business of defining that crime. The framers of the Constitution intentionally did

[329] Annals, Tenth Congress, 1st session, 108.

not assign to the Legislative body the power to define treason. This was shown by the Federalist and by the debates in the Virginia Convention, and by the opinion of judges and law writers. To this dilemma Congress was reduced: "If Congress proceeds in the manner proposed by the bill to define treason, and their acts are binding upon the judges, then succeeding Congresses may multiply the species of those offences to any number that may suit the purposes of an infuriated majority, and the courts be compelled to carry those acts into operation, however mischievous or ruinous; or if statutes which, in the opinion of the judges, militate against the spirit and letter of the Constitution, are declared by them to be of no force or effect, we certainly legislate to no purpose."[330]

On the eleventh of February, Giles spoke in defence of the bill. Pointing out the reasons for the growth of the power of the judiciary in the United States, he questioned if jurists had not, while rightly endeavoring to protect the innocent against the oppression of government, gone too far in multiplying barriers to the extent of converting them "into shields for the protection of guilt." We had a theory of the independence of the judiciary, but it was a mistake, he thought, to say that the judiciary department is an independent department—only the judges and not the judiciary, are to be regarded as independent. Proceeding, he attempted to show that the definition of treason in the Constitution was so general and the decisions of the courts so conflicting as to make it desirable that Congress should more clearly define in what treason against the United States consisted. He criticised the course of the judges in the Fries case, but more particularly in the case of Aaron Burr. Clearly having John Marshall in mind, he contrasted the "honorable and dignified character of an independent judge," with "a Judge, who, forgetting the nature of his office is perpetually aspiring not only to render his department absolutely independent, but to render it supreme over all other departments of the Government; in the one case he is

[330] Annals, Tenth Congress, 1st Session, 111. See speeches of Mitchell and Pope, February 11 and February 24.

placed in the elevated and dignified attitude of distributing justice impartially among his fellow citizens; in the other, he is reduced to the miserable political intriguer, scrambling for power."[331] Undoubtedly too strong and justly to be condemned for its disrespect to our highest court, this language was expressive of a well-grounded feeling toward Marshall and the courts. The immediate translation of an intense partisan to the highest judicial position in the land, had not, as the case of Marbury vs. Madison and the Burr trial convincingly show, converted the great Virginia Federalist into a calm and impeccable dispenser of justice, forgetful of the past and of all party conflicts.

And since Giles's day, many men, not in heated harangue, but in careful discussion, have concluded that the evils feared by the Virginia Senator who so ferociously assaulted the court, have come through the assumption by the Judiciary to itself of an unwholesome supremacy over the other departments of government.

One who heard Giles's speech and thoroughly detested his doctrine and arguments gives us one of the best descriptions to be found of him at that time: "Bayard, Giles, and Hillhouse are the first of senatorial champions," says the observer.[332] "Giles exhibits in his appearance no marks of greatness; he has a dark complexion and retreating eyes, black hair and robust form. His dress is remarkably plain, and in the style of Virginia carelessness. Having broken his leg a year or two since, he uses a crutch, and perhaps this adds somewhat to the indifference or doubt with which you contemplate him. But when he speaks, your opinion immediately changes; not that he is an orator, for he has neither action nor grace; nor that he abounds in rhetoric or metaphor; but a clear, nervous expression, a well digested and powerful condensation of language, give to the continual flow of his thoughts an uninterrupted impression. He holds his subject always before him, and surveys it with untir-

[331] Annals, Tenth Congress, 1st Session, February 11, 1808. This speech is also reprinted in Giles's Political Miscellanies.

[332] Sentences with reference to Bayard, Hillhouse, and Adams are omitted.

ing eyes; he points out his objections with calculated force, and sustains his positions with penetrating and wary argument. He certainly possesses great natural strength of mind; and if he reasons on false principles or with sophistic evasions, he always brings to his subject a weight of thought, which can be shaken or disturbed only by the attack of superior wisdom. I heard him a day or two since in support of a bill, to define treason, reported by himself. Never did I hear such all-unhinging and terrible doctrines. He laid the axe at the root of judicial power, and every stroke might be distinctly felt. His argument was very specious and forensic, sustained with many plausible principles, and adorned with various political axioms, designed *ad captandum*. One of its objects was to prove the right of the legislature to *define* treason. My dear friend, look at the constitution of the United States, and see if any such construction can possibly be allowed. . . . He attacked Chief Justice Marshall with insidious warmth. Among other things he said, 'I have learned that judicial opinions on this subject are like changeable silks, which vary their colors as they are held up in political sunshine'."[333]

On April 6, Giles's bill passed the Senate by a vote of 18 to 10, but failed in the House. This bill and speech was the culmination of the contest which had been going on between the administration and the judiciary from the beginning of Jefferson's administration. Incidents in this contest we have seen: the judiciary law of 1802 with its repeal of the Federalist act of 1801 providing berths for themselves in view of the recent Republican triumph; the case of Marbury vs. Madison, in which the court departed from the ordinary arrangement of judicial inquiry in order to strike a blow at the administration, the conduct of Associate Justice Chase in making an attack from the bench on the new Executive and Congress, the impeachment of him and the insane Pickering, in the absence of any other constitutional method of removal, and, finally, the

[333] Story, Life and Letters of Joseph Story, i, 158-159. Story must be mistaken in one point: according to family tradition and to the miniature reproduced in this volume, Giles's hair was sandy.

Burr trial, wherein the Federalist Chief Justice leaned overmuch to the enemies of the Republican President and the Republican President did not conceal ill feeling at the course of the trial. By 1808, an anti-judiciary movement of considerable proportions had formed itself as evidenced by motions in Congress and resolutions from legislatures,[334] of which that of Virginia was one. Possessed of unlimited courage, but lacking much in political acumen, Senator Giles, as in 1793 against Hamilton, voluntarily led the assault in the open, only to meet inevitable defeat and to bear at the bar of history the burden of blame, for himself and his brethren who voted with him.

With one other incident growing out of the Burr conspiracy Giles was to be connected during this session. The grand jury at Richmond, at the same time that they had indicted Burr, also brought in charges of complicity against John Smith, Senator from Ohio. On Nov. 27, motion was made for an inquiry into the question whether it was compatible with the honor and privileges of the Senate that Smith should retain his seat. John Quincy Adams, chairman of the committee to whom the matter was referred, reported after viewing the facts, that Smith should be expelled.[335] Although Mr. Smith was not a Republican and although the Republicans in the Senate were generally for his expulsion, Giles broke with his party and with great ability opposed the resolution of expulsion. No one detested the Burr conspiracy more than Giles and no one was more hostile to senators who became public contractors,[336] but he refused to yield to his prejudice. Without intemperance of language and heated personalities in which he often indulged, he gave a careful review of the evidence and delivered a masterly defence of

[334] See those of Nicholson and John Randolph following the Chase trial, Senator Tiffin's on November 5, 1807, George W. Campbell's of January 30, 1808. See Ames's proposed amendments to the Constitution in Am. Hist. Reports, 1896, ii, 149; Resolutions of Legislatures of Tennessee, Vermont, Pennsylvania, etc. Adams, iv, 205. These motions and resolutions called for a definite term of office for judges, popular election, power of the executive to dismiss judges on address of two houses.

[335] Annals, Tenth Congress, 1st Session, 55.

[336] This was the case with Smith.

[337] Giles's Speeches delivered April 9.

the accused Senator.[337] In the words of his chief opponent in the debate and most bitter enemy of the future, he delivered "one of the most animated and eloquent speeches I ever heard him make. . . . He argued the case of Mr. Smith with all his eloquence, and returned to the charge with increasing warmth until the last moment."[338] Smith was not expelled for lack of a two-thirds vote[339] but afterwards withdrew from the Senate.

[338] Adams, Memoirs, I (April 9, 1808).
[339] Annals, Tenth Congress, 1st Session, 324.

CHAPTER IX

THE CAMPAIGN OF 1808: REPEAL OF THE EMBARGO

Before his second inauguration in 1805, Jefferson had determined not to be a candidate for a third term of office. On January 6, he wrote to John Taylor of Caroline a letter giving expression to his views on the subject. He had originally believed in a seven years' term for the executive with perpetual ineligibility thereafter. But his mind had changed. "The service for 8 years with a power to remove at the end of the first four, comes nearly to my principle as corrected by experience. And it is in adherance to that that I determined to withdraw at the end of my second term." Washington had set an example, he would follow it, and a few more precedents "will oppose the obstacle of habit to anyone after awhile who shall endeavor to extend his term." There was "but one circumstance which could engage my acquiescence in another election, to wit, such a division about a successor as might bring in a Monarchist."[340] There was, indeed, no danger of bringing in a monarchist, but about a division there could be no doubt. On the 28th of June, John Randolph had written to Gallatin: "I regret exceedingly Mr. Jefferson's resolution to retire, and almost as much the premature announcement of that determination. It almost precludes a revision of his purpose, to say nothing of the intrigues it will set on foot. If I were sure that Monroe would succeed him, my regret would be much diminished."[341] Fearing intrigues but more especially desiring Monroe's selection, Randolph began some intriguing of his own. As a matter of fact, the history of the campaign of 1808 goes back to the beginning of 1804 when on account of the Yazoo investigation, in which Madison had participated, Randolph had lost confidence in the Secretary's integrity. Madison's Yazoo connection, and his desertion of the pure Republican doctrines of

[340] Writings of Thomas Jefferson, (Ford) viii, 339.

[341] Adams, John Randolph, 161.

1798, had made it impossible for John Randolph, uncompromising, radical, vaunting in his purity and his untarnished Republican faith handed down from the days of the prophets of that doctrine, to countenance Madison's successor to Jefferson's office. By the summer of 1806 he had convinced himself of the probability of Monroe's success at least in his own state. Writing June 6, to his friend Nicholson, he asserted "however we may differ on the subject of the present administration, all parties here (I speak of the Republicans) unite in support of Monroe for President. I have heard of but one dissenting voice, Giles, who is entirely misled:" and again on June 24, "You ask what are our prospects in Virginia. Depend upon it, a very large majority of us are decidedly opposed to Madison's pretensions; and if the other states leave it to Virginia, he will never be President."[342] At the same time, he was writing Monroe urging him to run and describing in heightened colors the conduct of the administration.[343] But, though loving Monroe and earnestly working for his success, Randolph's principal thought was to defeat Madison, and to that end he was willing, in order to prevent a division of the enemies of the secretary, to throw his forces into the fight for George Clinton,[344] the candidate of the discontented New York Republicans. For the Federalists there was no hope of success. They could only unite where feasible, with the Monroe and Clinton forces to defeat the common enemy.

In this contest for the Presidency, not the least important friend of Madison was William Branch Giles. His hostility in 1806 to Randolph and his incredulity as to Monroe's success we have seen above. He was, indeed, one of the most active lieutenants of the Secretary. On the 21st of January, the friends of Madison in the Virginia General Assembly held, at the Bell Tavern, a caucus "managed" by Giles and W. C. Nicholas. One hundred and nineteen members were present, chiefly from

[342] Adams, Randolph, 196-197.

[343] Ibid, 199 et seq. Others were aiding in stimulating Monroe's discontent. See letters of John Taylor to Monroe, February 27, 1806—Branch Historical Papers, June 1908, 290.

[344] See Letter to Nicholson, February 20, 1808; Adams, Randolph, 233.

the counties of the Piedmont and the region west of the Blue Ridge.[345] The friends of Monroe also held their caucus, some of the Federalists going with them. On the 23rd in pursuance of a call issued by Senator Bradley of Vermont, but thought to have been inspired by Giles and Nicholas,[346] a Congressional caucus assembled in Washington. The Monroe and Clinton men remained away and no difficulty therefore was experienced by the managers in securing the nomination of Madison by a vote of eighty-three out of eighty-nine voting and of Clinton for the vice-presidency by seventy-nine votes. On motion of Nicholas, a committee of correspondence and arrangement consisting of one member from each state was appointed and Giles received that honor for Virginia. Before adjournment Giles introduced a resolution recommending Madison and Clinton for the office of President and Vice-President respectively but stating that the members of the caucus have adopted this measure "from a deep conviction of the importance of union to the Republicans . . . in the present crisis of both our external and internal affairs."[347] Against this meeting the friends of Monroe issued a formal protest signed by seventeen names, among which was that of John Randolph. After a preamble declaring their hostility to a caucus at this time, and the reasons for their dislike of Madison, they conclude by saying: "We do therefore in the most solemn manner protest against the proceedings at the meeting held in the Senate chamber on the twenty-third of January last because we consider them

"As being in direct hostility to the principles of the constitution:

"As a gross assumption of power not delegated by the people, and not justified or extenuated by any actual necessity:

"As an attempt to produce an undue bias in the ensuing election of President and Vice-President, and virtually to transfer the appointment of those officers from the people, to a majority of the two Houses of Congress.

[345] Enquirer, January 23, 1808.

[346] Adams, Memoirs, i, 505-508.

[347] National Intelligencer, January 25, 1808.

"And we do in the same manner protest against the nomination of James Madison, as we believe him to be unfit to fill the office of President in the present juncture of our affairs."[348]

The war against King caucus which Andrew Jackson immortalized was, then, declared by John Randolph in February, 1808. In Virginia, "one of the people," William Wirt, answered the protest and "one of the Protesters," John Randolph, made bold reply.[349]

Appointed manager for Virginia, Giles was not inactive. By conversation, and by correspondence, and not improbably by newspaper articles if one might judge by his later frequent indulgence in newspaper controversy, he used his best endeavors to forward the cause. His energies were evidently not wasted, for one of his letters attracted the attention of Monroe.[350] The letter in question was written to Chancellor Taylor on March 27, 1808, in answer to one by Taylor.[351] It is a very long letter, covering two columns in the Richmond Enquirer when printed in 1826, and cannot therefore be reproduced here except in substance. In this letter Giles regretted the political divisions—though he had foreseen them—and claimed that he was making one more attempt to moderate the irritations arising from them. His own conduct had been so exemplary that he wished Monroe to be fully informed. From the time he reached Washington, he had not mentioned the subject of the Presidency unless the subject were mentioned to him—except to Virginians. And when he had spoken of the matter, it had been invariably, not to make charges against Monroe, but to defend the administration against charges brought by friends of that gentleman. These charges he then recited and gave the answer which he had made in each case. Charge number one was that Jefferson and Madison were in favor of war with Great Britain, whereas Monroe was for peace. To this he had replied that both the President

[348] National Intelligencer, March 7, 1808.

[349] Enquirer, March 18, 221-229, April 26, 1808.

[350] Monroe, Writings (Hamilton), v, 75-78, note.

[351] Taylor's letter was probably one that appeared in the Enquirer March 22, 1808, under the pseudonym "Casca", in which Giles is invited to specify his charges against Monroe.

and the Secretary were so peacefully inclined that they could not be brought to look "with sufficient attention at the opposite picture." The second charge was that the administration had rejected a treaty made by Monroe and Pinkney and on honorable terms for the United States. In answer Giles vouchsafed to affirm that the treaty was not of the character described, that it was accompanied by a declaration made by the British Commissioners which rendered its ratification inadmissible, and it was, besides, made on terms contrary to instructions given by the American negotiators. Charge number three was that the administration had added Pinkney to Monroe "to deprive Monroe of the *éclat* of that negotiation" in order that he might not be elected to the Presidency. This was not true; as a matter of fact, Jefferson's partiality for Monroe had excited unpleasant feelings. But why should he throw his influence for Monroe? Even if Virginia were for him, he had no chance. Leaving out Madison, Republicans would choose, not Monroe but George Clinton, who was older than George the Third himself and, therefore, in his [Giles's] opinion, ineligible. What had injured Monroe was not attacks on him but the pro-British and antiadministration attitude of his friends—men who in their memorials were denouncing the embargo. Those who thought as did his correspondent that the Secretary's chances were slim were under misapprehension—these chances were improving all the time.

As for himself, he had taken part with reluctance and desired only the public good. On account of his infirmities he took no pleasure in public life, and would probably be compelled to withdraw from its conflicts.[352]

The newspaper struggle in Virginia over the election had been going on ever since John Randolph, John Taylor, and Nathaniel Macon had laid their wires. The Enquirer was an administration organ; it regretted the divisions—wished they could be settled by a friendly conference—but, having to choose, favored Madison.[352a] However, in those innocent days, when all

[352] See Enquirer, April 1, 1826. The letter was published at that time to show that Giles had not, in earlier years, been hostile to Monroe.

[352a] See for instance, Enquirer, January 13, April 7, 1807; February 2, September 20, 1808, etc.

the acts of partisan warfare and newspaper ingenuity had not been developed, Trojan and Tyrian met with equal treatment when they sought to expound their views in party periodicals. William Wirt and John Randolph, Peyton Randolph and Benjamin Watkins Leigh, George Hay and John Taylor, and other lesser men poured forth their eloquence and argument over high sounding signatures, Hermodeus and Aristides, Opechancanough, and Panurge, Tullius, Hortensius, and Publicola. Monroe's mission, the treaty, the conduct of the administration, the respective merits of the candidates, were displayed in terms glowing with praise or scorching with indignation;[353] Federalists were charged, and not untruthfully,[354] with coöperation with the partisans of Monroe, and both of the accused hastened to make denial. On the other hand, it was asserted, with truth, that many of the Federalists were favorable to Madison.

Heated and interesting as the contest was, there was never a doubt as to its outcome. Madison received in Virginia, according to an account of November 22, 1802, 12,451 votes, Monroe 2,770, and Pinckney 435.[355] The returns showed some other things besides the choice of Virginia; they showed that the charge that the Federalists were supporting the anti-administration Republicans was true,[356] and that Tidewater Virginia did not believe enthusiastically in the embargo.[357] But, from the country as a whole, the returns were pleasing to the administration and its friends. Madison received 122 out of 176 electoral votes; all but fourteen of the opposition votes had come from New England and even Vermont had voted properly. Anti-administration Democrats had to be content with six votes,

[353] See Enquirer, 1807 and 1808, almost any number.

[354] See for instance an account of a Federalist meeting recommending Monroe, Enquirer, October 18, 1808.

[355] Argus, November 22, 1808.

[356] However, Madison received a number of Federalist votes.

[357] Monroe carried only five counties and one city. The vote in Norfolk borough was 202 for Madison, 248 for Monroe, and 2 for Pinckney; in Princess Anne 80, 148, 0; Warwick, 17, 39, 0; Loudon 87, 124, 0; Northampton 9, 21, 0; Accomac, 30, 397, 0; In Williamsburg Federalists and anti-administration together secured 20 and Madison 19. In the western counties generally the administration received all or almost all of the votes cast.

and James Monroe with none.[358] This was a famous victory and indicated that the majority of American citizens believed in the policies of the Republican rule. But there were some things about the victory to make one pause and reflect. In the first place, four years before the result had been more triumphant. Only fourteen electoral votes then fell to the lot of the opposition, now they receive fifty-four. Besides, in 1804, only two states had gone for the Federalists; now there were five, four of them being New England states, whereas in 1804 only one New England college of electors had voted against Thomas Jefferson. Federalist governors, legislators and Congressmen were also now chosen in eastern states to take the place of the followers of Jefferson who held those places of distinction.[359] Had the choice of presidential electors been by the people in all cases, the Republican majority for Madison might have been appreciably reduced.[360] Was this the result only of the natural decline of Republican popularity, or of the inevitable growth of dissension? Or was there a deep cause for the turning of newly-converted New England back to Federalism? The cause was, indeed, not far to seek; in 1804 there had been no embargo; no prohibition of New England trade—now there was embargo several times reinforced and New England was filled with grumblers.

The embargo act passed December 22, 1807, had at first been popular. On February 8, 1808, the General Court of Massachusetts, then Republican, resolved that "we consider the imposing of the Embargo a wise and highly expedient measure, and from its important nature calculated to secure to us the blessings of peace."[361] The Legislature of Virginia on January 13, 1808, declared "it a duty we owe ourselves, to declare that we submit with pleasure, to the privations arising

[358] Schouler, ii, Appendix A.

[359] For instance the legislature of Massachusetts in spring, 1808, candidates for Congress, in New Hampshire and Rhode Island, the Governor of Vermont.

[360] Electors in Vermont, Mass., Conn., N. Y., Del., S. Carolina, Georgia were chosen by the legislature. See Stanwood, History of Presidential Elections, 56.

[361] Resolves of the General Court of Mass., 1808, 89, 90.

from the energetic measures recently adopted by the constituted authorities in laying an embargo, which meets our warm approbation," and "Resolved unanimously, that the general assembly, . . . hereby solemnly pledge the whole energies of their commonwealth, to the support of such meassures as may be adopted to further an honorable peace, or avenge the injured honor, of these states."[362] Virginia held to her opinion; but Massachusetts not long afterwards announced a different one. On March 8, 1808, Madison, viewing the reception of the measure, had written to William Pinkney, "the Embargo continues to take deeper root in the public sentiment, and in the measures of Congress."[363] Soon, however, different sentiments were heard. The operation of the law, the severity of the supplementary acts, the discretion of the President, which was exercised in what was considered a most arbitrary manner, the agitation of politicians anxious to make capital out of whatever might give opportunity for victory—all contributed to start a great cry of discontent, of fierce criticism, and of defiance that to Jefferson seemed to thunder beneath his feet. Town meetings were held, addresses to the President were adopted, resolutions of legislatures were voted, instructions were sent to Senators of the United States. Commercial America had determined on repeal or nullification, or probably secession. In the summer of 1808, during the recess of Congress, a battle royal had been fought between the President, determined to enforce the law, and the merchants and sailors of New England determined to evade it. When Congress met, however, the President's spirit had declined. Unwilling to tie the hands of a successor by policies which he might recommend, he did not make recommendations as to the embargo.

He expressed himself as gratified at the effects of the law but let it "rest with the wisdom of Congress to decide on the course best adapted to such a state of things."[364]

In the House, the portion of the message on foreign affairs was sent to a committee whose chairman was G. W. Campbell.

[362] Acts, 1807-1808, 83-84.
[363] Writings (Hunt), viii, 19.
[364] Message of November 8, 1808, Richardson, i, 453.

But before this committee could report, a vigorous effort had been made to secure the adoption of resolutions calling for the immediate repeal of the embargo.[365] In the Senate, a resolution was proposed by Hillhouse and a debate began on November 21 and continued through December 2. The position of the Federalists as presented by Hillhouse, Lloyd, Adams, and White of Delaware, was in brief as follows: the purpose of the embargo had always been different from the reason assigned; it did no good—France was satisfied with it; England did not suffer from it; it was not obeyed by our countrymen; it was encouraging, therefore, a spirit of disobedience. It should be repealed and the merchants be allowed to follow their own ways—that is, throw themselves into the arms of England. We ought to have neither war nor non-intercourse in its place. Great Britain was so strong that we could not hurt her and France so contemptible that she, without our help, could not hurt us. The Republican position was upheld by Pope of Kentucky, Smith of Maryland, Moore of Virginia, Crawford of Georgia, and Mitchell of New York.

On the 24th, Giles arose. Realizing that the burden of the support of the policy of embargo rested on him, he spoke at great length, and with great earnestness and ability. Other Republicans who preceded him, although answering the attacks of the opposition, had spoken in uncertain tones and given but poor defence of the merits of the Embargo, admitting it had not succeeded as was expected, and hinting they would not grieve over its repeal. Not so with Mr. Giles—that was not his manner of speech. After a preliminary blow at the Federalists, who, smarting under the defeat of the recent election, would destroy that "union of mind and action" which our dearest interests demand," he entered into an interesting and exceedingly ingenious argument in opposition to the resolution of repeal. There were two objects, he had always understood, "contemplated by the embargo laws. The first, precautionary, operating upon ourselves. The second, coercive, operating upon the agressing belligerents." The first object had been answered

[365] Annals, Tenth Congress, 2nd Session, 16.

beyond his most sanguine expectations. It was admitted by all that the embargo laws had saved an enormous amount of property and a number of seamen, "which, without them, would have forcibly gone into the hands of our enemies, to pamper their arrogance, stimulate their injustice, and increase their means of annoyance." "It has," he declared, "preserved our people—it has saved our honor—it has saved our national independence."

Taking up the objection that the embargo had been injurious to the merchant and the farmer, he was willing to admit that there were many worthy merchants, of small capital, who suffered by the suspension of their employments; and he was sorry for them; but this suffering was incidental to every coerced state of things; and was attributable, not properly to the embargo, but to the causes that rendered its adoption indispensable. As to the farmer, Giles knew something about that occupation; "The American farmer is," he said, "now enjoying the fruits of his honest industry, in peace and security, blessed at the time with every political, social, and domestic enjoyment, perfectly exempt from all vexations, and I had almost said taxations, and with pleasure beholds a surplus of fourteen millions of dollars in the public Treasury after paying every debt which could be demanded of the honor of the Government . . . I believe, and every sensible farmer will believe, that he has for the last ten months obtained more for his surplus plenty under the embargo, than he could have done in any other state of things, which was in the choice of the government. . . . Would you tell the farmer that he would get more for his surplus produce in time of war, than he has received since the embargo?" The farmers would endure war "rather than surrender their own liberties, and the nation's honor, independence, and sovereignty; let us then for a time, sir, bear our present privations—let war be the last experiment." Some advantages, furthermore, in the opinion of Giles, accrued to the farmer—he was compelled to devote more attention at this time to the improvement of his land and the development of household manufactures.

Not only the seaman, the merchant, and the farmer were better off, said Giles, because of the embargo, but the manufacturer, the laborer, the mechanic were profiting. Houses were being built, and the internal improvements stimulated. As far as the embargo laws had been precautionary, he claimed, therefore, that their success had been complete, "and while they have been attended with some privations and sufferings, they had not been without their beneficent effects on society." What had been, he asked, the actual effects of these laws on the belligerents, and in so far as they have failed, what were the causes? They had, he asserted, lessened inducements of England and France to war by keeping out of their way the rich spoils of our commerce, which had invited their cupidity, and which was saved by these laws; they enhanced "the prices of all American produce, especially articles of the first necessity to them, to a considerable degree, and, if it be a little longer persisted in, will either banish our produce (which I believe indispensible to them) from their markets altogether, or increase the prices to an enormous amount." To sustain this latter point, quotations on grain, cotton, tobacco, lumber were given by him from the Liverpool Price Current.

And English revenue would be diminished. Why had not Great Britain, influenced by these inducements, repealed her orders in council? Because of their information, "that the people of the United States had become false to themselves; had refused to bear the necessary privations imposed by the Government; had, in fact, separated themselves from their own Government." If the embargo laws had not been a complete success, their failure, he was justified in saying had been owing "to extraordinary causes, which could neither have been foreseen nor anticipated at the time of the adoption of the measure, and, therefore, could not furnish any imputation against its policy or wisdom."

If not a continuance of the embargo, what? "There are no substitutes for the embargo, but war or submission." It was said, the embargo could not be enforced. The government did, in Giles's opinion, possess power to enforce laws. The

majority should govern. The militia of Massachusetts would themselves put down, when called upon lawfully, any insurrection stimulated by "electioneering leaders and partisans." But he had little fear of these insurrections. The interest of the people of New England, men of property and family, enjoying peculiar advantages from the operations of the General Government, had nothing to gain by insurrection, and not they but Great Britain would gain by a connection with that power.

He was not, he said, an apologist for France—both belligerents injured us as badly as they were able. But he wished to denounce "the idle and ridiculous tale of French influence, which has so disrespectfully and disgracefully to our country been circulated by newspapers." It was originated by British influence, invented by the British cabinet, and probably as had been suggested to him, transmitted in a letter by the Governor of Nova Scotia to certain partisans in Boston.[366] This long and able speech was concluded by an appeal for unity. We were fighting, he thought, for the principle of neutrality: "The eyes of the world are now turned to us." If we submitted, Great Britain, France, all the world would despise us." "Let us then, sir," he pleaded, "banish all personal feelings; let us present to our enemies, the formidable front of an indissoluble band of brothers, nothing else is necessary to our success."

If no one else was firm, Giles was; if others wavered, he did not; persist in the restrictive policy unless you wish war. There is no middle ground. This was at least specific. Such was not the sentiment of the report made by Campbell to the House on November 22, written by Gallatin, agreed upon as the policy of the administration newly elected, and concluding with these resolutions: "that the United States cannot, without a sacrifice of their rights, honor, and independence, submit to the late edicts of Great Britain and France." "That it is expedient to prohibit, by law, the admission into the ports of the United States" vessels from countries having in force decrees

[366] John Quincy Adams had so informed Giles and others, in March, 1808. Memoirs, i, 518-521. See Giles to Adams, December 17, 1808. Niles's Register, 35, 191.

violating our neutral rights, and likewise the importation of their products. "That measures ought to be immediately taken for placing the country in a more complete state of defence."[367] These resolutions were under discussion at the same time that the debate in the Senate on the motion of Hillhouse was going on. After earnest debate, they passed the House by a large vote, the last unanimously, the first by a vote of 118 to 2.[368] That was the programme; a programme to which all might agree. But it did not in definite terms include the continuance of the embargo. The debate on that subject went on in the Senate, the speech of Giles being the particular target of Federalists like Pickering and Lloyd. Giles was forced to return to the subject on December 2.

Some new light is thrown by this speech on his views on the important question of the embargo. To the assertion of the Federalists that the embargo was intended to be permanent, he gave an explicit denial. It was not intended to be permanent but "let us wait a little while, before we make ourselves bloody in the wars of Europe. Let us have a little patience, a little self-denial." Further on, however, warming up to the British "extraordinary project of recolonization," he declared, "I verily believe we shall again have to fight her out of it; and I am inclined to think that now is as good a time for the contest as we can expect in any future time." One of the British contentions reëchoed by Federalists like Pickering, Giles was now able completely to destroy; that was the assertion that the Orders in Council had no influence in producing the embargo. Admitting that there was no official knowledge of the orders of November 11, 1807, when the embargo message was received by Congress, in reference to the House debates on the embargo bill and by newspaper reports of the day, he proved, that the knowledge of the British orders was the real occasion for the adoption of the embargo policy. In addition to a defence of the embargo, it was the duty of Giles to protect the President and his absent friends for their part in the adoption of that

[367] Annals, Tenth Congress, 2nd Session, 519-521.
[368] Annals, 855, 894, 895.

measure. In view of subsequent events, his very earnest defence of Mr. Madison's sincerity and of Mr. John Quincy Adams's "disinterestedness and purity" of motives, reads as a touch of humor. "As to his [Adams's] exemption from all views of personal promotion or aggrandizement," Giles continued, "I here assert that fact, upon my own knowledge and my own responsibility, as far as can be warranted by the most explicit and unequivocal assurances from the gentleman himself; given, too, under circumstances which render their sincerity unquestionable." In future years, this testimony to Mr. Adams was to return to harass the memory of the enthusiastic Virginian, and he was to apologize to the world for every word now uttered.

When the vote was taken on the Hillhouse resolution, only six voted for it and twenty-five against it, and the Senate had committed itself against repeal. The House was to do so on December twentieth.

Having decided that a repeal of the embargo was not expedient, the Senate, under Giles's leadership, proceeded to adopt measures for its more satisfactory enforcement. On July 29, Gallatin had written Jefferson that "a restrictive measure of the nature of the embargo applied to a nation under such circumstances as the United States cannot be enforced without the assistance of means as strong as the measure itself," and had then given his ideas of the means necessary to that end.[369] In conference with the Secretary of the Treasury,[370] Giles, to whose committee had been committed the task of bringing in the necessary bill, prepared a measure suited for that purpose and reported it to the Senate on December 8 and 12. The bill when in the form of law consisted of fourteen sections. The first punished with forfeiture of the cargo and ships or other conveyance and with fine and forfeiture of the value of the cargo, any person loading on "ship, vessel, boat, watercraft, . . . cart, wagon, sled, or other carriage or vehicle, with or without wheels, any specie, goods, wares, or merchan-

[369] Writings of Gallatin, i, 396.

[370] Gallatin to Giles, Annals, Tenth Congress, 2nd Session, 232-236. Adams, Writings of Gallatin, 428.

dise, with intent to export, transport, or convey the same without the United States;" the second required a permit from the revenue officers for the loading of vessels, the loading to take place under inspection, and a bond of six times the value of the vessel and cargo to be given as a pledge that the vessel would not go to a foreign port or violate other provisions of law. By the next section, the collector was given power to require the discharge of a suspicious cargo. Other sections provided that persons in whose name the license or register of a vessel read were to be considered the owners until these papers were changed; where vessels were required to give bond for the relanding of their cargo in the harbors of the United States, "neither capture, distress, or other accident whatever, shall be pleaded or given in evidence in any such suit" unless it were proved that the capture was hostile and the accident not due to negligence; collectors were authorized to seize articles which in their judgement were intended for exportation. They were to act under instructions of the President, these instructions were to be evidence of justification in suits against the collectors, and the suits themselves were to be in the United States courts. For the enforcement of the provisions of the act, the President might employ the land and naval forces of the United States and call out the militia; he was authorized further to hire, arm, and employ thirty vessels and the necessary seamen for immediate service in enforcing the laws on the seacoast.

There would be no doubt that if this law was necessary, the restrictive policy could not be "carried into effect without imposing serious inconveniences;"[371] nor that Giles was, as he expressed himself to Josiah Quincy in November, "in favor of putting to trial what the strength of the Federal arm was, and if it were not sufficient to enforce its own laws, it might be as well known now as hereafter."[372] It could hardly be wondered at that the Federalist members, representing those citizens whose conduct had given rise to the presentation of this bill should resist its passage. Goodrich of New Hampshire opened

[371] Letter of Gallatin to Giles, above cited.

[372] Life of Josiah Quincy by his son, 143.

fire against it on December 17, to be followed by Lloyd of Massachusetts. The excessive bonds required, the discretion allowed the President in the issuance of instructions, the power of seizure given the collectors, the provisions as to ownership of the vessels, the power allowed the deputies of the President to call out the military force, were all described as dangerous, alarming, and unconstitutional.

On the twenty-first Giles came to the defence of his measure. The various objections to the bill were taken up and disposed of. It was charged that excessive bonds were required; the answer was, no smaller would be effective. Many persons of small means could not secure them and would be driven from business; this objection was exaggerated. "Are these apprehended inconveniences," he asks, "of such a nature as to render it necessary to abandon a great national object, for the accommodation of a few individuals who are affected by them?" It was objected that this bill contains new and unconstitutional features; to this it was replied by Giles with elaborate detail that no principles in it were unsupported by the precedent of former or present laws. Mr. Goodrich said this law established a "military despotism." This was not true in the first place, said Giles, and in the second, "if we are at all at peace . . . . it is a peace like war, and, in my judgment, would authorize the adoption of any measure, which would be justified in a state of war." It was actually claimed that the embargo laws were unconstitutional. After the action of 1794, when all agreed upon an embargo, "I really should have been surprised, in entering a boarding school, to have heard that question propounded, merely to try the skill, or whet the ingenuity of sprouting boys, or lisping misses."

Were the embargo laws violated? What was the cause? British influence, answered Giles. The British, at the beginning, offered our citizens protection if they would violate the law; and it was well known that the British government had agents in most of our seaport towns for purchasing supplies for its fleets and armies. There were also, he charged, British merchants, and British capital connected with unprincipled Ameri-

cans engaged in the violation of these laws. Unprincipled Americans had been invited, through these means, "to engage in this scandalous traffic." Pickering and Hillhouse made answer; Pope spoke in favor of the bill which passed the Senate December twenty-first by a vote of twenty to seven.[373] A little after daylight on January 5, the House passed it with amendments, 71 yeas, 32 nays.[374] The President gave his approval, January 9, and one of the most stringent measures ever adopted in time of peace became the law of the land.

No time was lost by the Federalists in expressing their alarm and indignation. Town meetings in Massachusetts adopted threatening remonstrances and secession was whispered about. Committees of safety were appointed. Citizens announced their determination not to assist in the execution of the enforcement act and labelled those who should do so "as enemies to the Constitution of the United States and of this State, and hostile to the liberties of this people."[375] Although the Lieutenant Governor, Levi Lincoln, now filling the place of Sullivan, deceased, condemned the action of the town meetings, both Senate and House of the General Court adopted addresses in answer to the Governor declaring that Massachusetts "will not willingly become the victims of fruitless experiment." Resolutions followed condemning the "unjust, oppressive, and unconstitutional" act.[376] To the Legislature of Delaware, it appeared to be "an invasion of the liberty of the people, and the constitutional sovereignty of the State governments."[377]

Connecticut and Rhode Island, following the lead of Massachusetts, pelted the embargo, and particularly the act of January 9, with all imaginable epithets, and agreed to coöperate with Massachusetts and other states of their way of thinking, in restoring commerce, relieving the country of the present political evils, and preserving the Union.[378] Loyal Virginia sent

[373] Annals, Tenth Congress, 3rd Session, 298.
[374] Annals, 1024.
[375] Adams, U. S., iv, 13, et seq.
[376] Ames, State Documents on Federal Relations, 26, et seq.
[377] Ibid, 37.
[378] Ibid, 42, 44.

up word that the course of the administration was entirely proper. The war would have been justifiable under the worries and sufferings of our nation; yet the President and Congress had adopted "the only measure of relief, compatible with our power, and at the same time with our honor." But they defend the embargo not because they fear the other alternative of war, for they resolve "that we will stand by the government of our country; and that we will support them with the last cent of our treasure, and the last drop of our blood, in every measure, either of defence or offense, which they may deem expedient, to vindicate our injured honor and our violated rights."[379] The tone of these resolutions, though loyal to the last word, is yet expressive of the feeling that a more vigorous policy than embargo would be welcome. Giles had intimated the same suspicion—indeed a war party had been formed which was to fight for more energetic measures until war was declared. Republican leaders in Virginia, like W. C. Nicholas, Spencer Roane, and Thomas Ritchie could not restrain their impatience.[380]

Congress was, of course, not blind to the sentiment of the country. The resolutions of New England daily found their way to that body, and from other sources the seriousness of the crisis in that quarter was fully made known. It was apparent that a retention of the embargo was perilous. John Quincy Adams kept his friend Giles and others informed of the situation.[381] Joseph Story came the latter part of December to take the place of Jacob Crowninshield, deceased,[382] and, though arriving before the passage of the Enforcement Act, was fully aware of the situation. Story stayed long enough to get hold of Ezekiel Bacon, who, becoming panic-stricken, "communicated his panic to his colleagues & they to the majority of the sound members of Congress."[383] By the beginning of February, Jef-

[379] Acts of 1808-1809. Feb. 7, 1809, 99-104.

[380] See below—Chapter XI.

[381] Niles Register, 35, 190-192.

[382] Annals, 898.

[383] Jefferson to Dearborn, July 16, 1810. Writings of Jefferson (Ford), ix, 277.

ferson reported that "a sudden and unaccountable revolution of opinion"[384] had shown itself, chiefly among the New York and New England members. And we may readily believe this had occurred despite the "reiterated attempts" made by Jefferson through a committee of his particular adherents, Giles, Nicholas, Campbell, to detach them from their opposition.[385] Unwilling to wait until the extra session to be called May 22, efforts were now made to secure an early date for the repeal of the offensive laws. Nicholas, who had ceased to be a believer in the efficiency of the embargo, offered on January 24, a resolution that the United States ought not to delay beyond a blank date to repeal the embargo laws and to adopt measures of defence.[386] Some proposed June 1, some March 4, some February 15. June 1, the date acceptable to the administration leaders failed of adoption;[387] March 4 was agreed upon.[388] The House proceeded to debate the measure suggested to take the place of the embargo, and despite the agitation of the warmen like Nicholas, showed, as a body, little stomach for harsh measures.

Something had to be done, or the Republicans would become utterly disorganized. Caucuses were held, Giles used his energies and something was saved from the wreck. Repeal of the embargo to go into effect on March 4, and nonintercourse with Great Britain was to be the programme. On February 8, he introduced in the Senate a resolution to the foregoing effect accompanied by another providing that all foreign armed ships should be excluded from the waters of the United States. Less than two months after this vigorous defence of the embargo and his bill for the enforcement, he rose[389] to justify the measures now proposed. However, the speech delivered is not so much an argument for repeal or for nonintercourse, as for

[384] Jefferson to Thomas Mann Randolph, Feb. 7, 1809. Writings of Jefferson (Ford), ix, 244.

[385] Life and Letters of Joseph Story, i, 185. Story admits that he did all he could to accomplish the repeal, but gives the chief credit to Bacon.

[386] Annals, Tenth Cong., 2nd Sess., 1172.

[387] Ibid, 1328 (Feb. 2).

[388] Ibid, 1350 (Feb. 3).

[389] Feb. 13, 1809. Annals, 1232.

war. In this way, he saved the appearance of consistency. The resolution which he now presented was, he said, dictated by a spirit of conciliation; it was not that of choice; "nor the one by which I could wish that my responsibility could be tested." In his opinion, war was amply justified by the existing crisis. "If the public sentiment could be brought to support them, wisdom would dictate the combined measures of embargo, nonintercourse, and war. . . . The time is not past, but is fast approaching, when the whole energy of the nation must be called forth to save what we have left of our honor, independence, and dearest interests." Embargo would deprive our enemy of the products, nonintercourse "would deprive him of our market for his surplus manufactures;" "war could be made to retort upon him some of the evils of his own injustice." Giles would meet the enemy with armed ships on the ocean, and would seize his colonial possessions upon this continent. If the embargo had to go—and he had never relied upon its coercive effects as much as have some others—he would substitute letters of marque and reprisal, and the invasion of Canada. The House of Representatives had rejected[390] that plan of operation and nonintercourse was the next best for adoption. But must we continue to bear insult? Must we wait for a greater accumulation of injuries? This was the burden of the speech and the repeal and nonintercourse were dragged in incidentally and unwillingly. Eulogizing and defending the retiring President against all criticism, he did not himself forbear to add that Thomas Jefferson was not, as charged, seeking to involve us in war; he was instead a "lover of peace, and I fear that his amiable and anxious solicitude to preserve it, may have some tendency toward rendering war indispensable."

One of the most interesting portions of this speech is the eulogy of commerce which Giles found it desirable to deliver. Although in later days he became suspicious of every occupation but agriculture, now he thought commerce affected every interest; it provided the income of the government, it must be

[390] The Nicholas resolution defeated by the House.

protected. Former prejudice of the speaker notwithstanding, the United States must have a navy to protect its commerce. And it was as certain, he felt, as any effect produced by irresistible causes that the prejudice against commerce would pass away. The southern people were not, as represented, hostile to their eastern fellow citizens. The interests of the two sections were mutual and reciprocal, and it was to be hoped that their unfortunate difference of opinion might "eventuate in renewed acts of reciprocal kindness, confidence, and friendship."

It was such deliverances as this, no doubt, which brought from Joseph Story the opinion: "the belief that all members reflect the will of the administration is all of the same stuff as the stories about hatred to commerce by Southern gentlemen. On this subject I find them liberal. Mr. Giles, who is a host, is one of the warmest advocates for commerce, that I have ever known. He is a great friend to the Eastern States, and said to me the other day, that all the injustice of Great Britain and France would not affect his mind half as much as the disaffection of the Eastern States."[391]

The Federalist position on the measures necessary to be adopted may be found in the speech of Bayard in answer to Giles: "Place England and France upon the same footing, by repealing the nonimportation act, rescinding the proclamation, and repealing the embargo." "Insist upon adequate reparation for the affair of the Chesapeake." Sign any treaty as good as those rejected. "Agree to resist the execution of the Berlin decree, and if she, Great Britain, persists in her Orders of Council, declare war against her."[392] In other words, while pointing out the failure of the administration, the nonexecution of the embargo, the dangers to be expected in New England, the opposition could offer nothing except submission. . . . Give up our contentions as to impressment, admit that we have been wholly wrong in most everything, make war on France, ally ourselves with Great Britain, and if she then does not at least treat us as neutrals, make war on her.

[391] Life and Letters of Joseph Story, I, 176.

[392] Annals of Congress, 10th Cong., 2nd Sess., 408.

If the administration had played a weak, vacillating part, the Federalists, one might fairly conclude, gave no indication that their policy, if they had been in power, would have been other than an abject surrender to the British navy.

The resolution was agreed upon, immediately after Bayard's speech, and a bill to carry it into effect received the favorable vote of the Senate on February 21, passed the House on February 27, and became law March 1. The bill as passed by the Senate, despite Giles's protests against the mildness of the resolutions on which it had been based, nevertheless gave authority to the President, in case either nation withdrew its orders and the other refused, to issue letters of marque and reprisal against the latter. The House had already taken its stand against positive measures and struck out this provision. The act forbade, after May 20, ships under the flag of France and Great Britain to enter our harbors and prohibited all importation of goods produced by these nations or their colonies. If either Great Britain or France should revoke her orders or edicts, the President was authorized to renew our trade with that nation so doing. After March 15, all embargo acts, except as they related to Great Britain and France, were to be repealed, though ships were still to give bond that they would not proceed to the ports of Great Britain and France. The embargo as a general policy was to be no more. It had occupied the area of debate long enough. For it, though he afterwards declared it was never a favorite measure of his, Giles had skillfully pleaded. He had done what he could to preserve it as long as possible, though he persisted in disclaiming any desire to make it permanent. He had gone to the verge of the Constitution in his endeavor to assist the administration in its defence. And when their policy had been doomed, he had saved what he could of it, as a substitute for what he really desired —war.

A confident opinion on the questions at issue in regard to the expediency and effect of this policy with which Giles, somewhat against his inclination, was so closely identified, would be extremely rash. More serious or more impartial investigations

of the entire subject must be made before judgment can be given with assurance. Some things seem to stand out as worthy of acceptance. The choice of evils before the administration was hazardous. The embargo policy was indeed an experiment as any other policy would have been, and an experiment less dangerous than war. It did preserve the peace, and if it produced evils, it is not certain that it did not preserve us from evils worse than the embargo itself. Those evils were no doubt grossly exaggerated by partisans of that day and have been grossly exaggerated by partisan writers since that time. The source from which the laws proceeded have placed the discussion of the incident in the midst of the conflict of argument and passion between the two sections of country; and, although it may properly lie there, argument has been winged more with prejudice than with fact. Southern writers have gloated in the disloyalty of the New Englanders as justification for their own later acts, forgetful that the South, too, although supporting the policy of embargo, by resolution and speech, violated it when she could;[393] northern writers have been glad to point out that, in the irony of fate, the South, after all, received in her own impoverishment, her just punishment for the iniquitous system forced on the North. The South did suffer, and suffered severely. For instance, the exportation of cotton was cut down from a total of $14,232,000 for the year 1806-1807, to a total of $2,221,000. The exportation of tobacco fell from $5,476,000 to $838,000.[394] Virginia suffered terribly.

[393] See Annals, Tenth Cong., 2nd Sess., 286 and 1230. Some incidents given by Hillhouse and John Randolph. See Report of John Howe to Provost, Aug. 5, 1808, in which a case of evasion of the law by a Norfolk captain is given. Am. Hist. Review, vol. 17, 99. Ramsay, History of South Carolina, 441-442.

[394] Seybert, Statistical Annals, 147. In addition to the facts cited here see, for instance, report of John Howe—Am. Hist. Review, 17; 90, 98, 99. Howe says southern cotton fell from 24 cents to 10 after the embargo; "it would take a great length of time to collect seamen to man the vessels which are lying ruining by the wharves of Alexandria," etc. Ramsay, in The History of South Carolina, 441-442, says the sufferings were "immense"—the price of commodities fell by one-half. Branch Hist. Papers, June 1908, 307. Speeches in Congress—10th, 11th, and 12th Congresses.

Her tobacco, her wheat, her flour, her Indian corn, sought in vain for a market. Her total exports declined suddenly to one-ninth of the value which they had had in the year preceding the imposition of the embargo. When this blight was removed, although the nonintercourse with Great Britain took its place, the trade revived. John Randolph, in 1808, told Josiah Quincy the embargo was ruining Virginia—particularly his county of Charlotte. In this county, the justices of the county courts kept open the courts. In other parts of the state—for instance, Albemarle—the courts had been closed. The immediate pressure of the embargo had, therefore, been checked and had indeed gained popularity "with all those who, being needy or embarrassed, were willing to find an excuse for delinquency."[395] But the South, though crippled, was not desolate; her cotton and tobacco did not necessarily rot. Her society was sufficient unto itself for its ordinary needs. The decline of the South did not date from the embargo. Virginia, for instance, had never recovered from the effects of the Revolution.[396] It is also impossible to estimate the loss occasioned by British and French restrictions. Nor was the injury done by the restrictive policy comparable to the economic distress occasioned by the war when it did come.[397]

A wholesale condemnation of the embargo of 1807-1809 seems hardly justified by the conditions of the times; but that too firm a reliance was placed upon it, that insufficient preparation was made for the war for which it should have been only the preparation, is no doubt true. But that the Federalist conduct, argument, and desires were less American and less enviable than those of the party in power would seem also to admit of little dispute.

[395] Report of a conversation, Nov. 16, 1808, between Quincy and Randolph. Life of Quincy, 143.

[396] Grigsby says the period of 1783-1814 was a period of poverty in the tobacco country. See Discourse on the Presidents and Trustees of Hampden-Sidney College, 45.

[397] For instance, the total exports of Virginia in 1813-14 were $17,581 in value against $6,676,976 the year after the war ended and $8,112,060 in 1815-1816. Seybert, 143.

CHAPTER X

THE SMITH FACTION

Jefferson remained in Washington long enough to see his friend and candidate inaugurated President and then returned amid the cursings of New England and the blessings of his own people. An address written in the apt and fluent language of William Wirt extended to him the thanks of Virginia for "the model of an administration, conducted on the purest principles of Republicanism; for pomp and state laid aside; patronage discarded; internal taxes abolished; a host of superfluous offices disbanded; the monarchic maxim 'That a national debt is a national blessing,' renounced; . . . more than thirty-three millions of our debt discharged" and for other virtues exhibited in his public service. No evidence of failure here; Virginia was "sound;"[398] Virginia was loyal to her greatest living son. Would she be loyal to his successor?

There were, however, some of the sons of Virginia who had deserted even the chief of the Republican armies; others who had clung to him desired, like John Randolph, to play an independent rôle, refusing to obey the word of the new Pharaoh. Among these independent spirits, William B. Giles was to be the most prominent. To this pugilistic, though capable and patriotic, Republican the eight years of Jefferson's administration were an oasis of constructive statesmanship in a vast wilderness of opposition and criticism. The Senate leader for the two administrations of Thomas Jefferson had been the bitterest opponent of the preceding three, and was to be an enemy to five that were to come after. The character of the man was such that he could not long remain within political traces,—only the unexampled leadership and tact of the sage of Monticello could have commanded his loyal support for eight years; and even with Jefferson, there were, during the last few months of the second term, signs of a possible break. One could not expect Giles, therefore, to go eight years more in regular channels, especially if

[398] Acts of the General Assembly, 1808-1809, 98, 99.

other influences should add themselves to the natural inclination of his character.

Signs were unfavorable for the success of Madison's administration. Federalists were certainly increasing in strength and Republicans had begun to fall into disorganization. To add to the inevitable troubles proceeding from general and natural causes, there were already signs of a feud. In January of 1809, sixteen Republican Senators had united with the Federalists in forcing through the Senate a bill ordering every armed vessel belonging to the government into immediate active service. Giles, whose expressions in favor of a navy for the protection of commerce we have seen, was one of the sixteen.[399] The House had forced the Senate to retreat from this position, but a vote taken on January 10 had shown a surprising number of supporters for the Senate programme. The ostensible, if not the actual purpose, as it well might have been, was the desire of many members for stronger measures than were being pursued —to force the hands of the lovers of peace and compel a preparation for war.[400] The Secretary of the Treasury, seeing no good in this sudden display of Republican love for a navy, regarded it only as an effort to impoverish the Treasury, by squandering six million dollars on a useless policy and of bringing him in this way into disrepute.[401]

Personal feelings to an extent were certainly back of the measures proposed by Giles and Nicholas and their Federalist friends. The Vice-president, Clinton, and his friends, could not so easily lay aside the ill feelings arising from the defeat administered by Madison; and he and his destined chief counsellor might expect no gratuitous favors. Between Gallatin and the Smiths, Robert, Secretary of the Navy, and Samuel, his brother, Senator from Maryland, there existed an ancient enmity that time did not heal and circumstances were to embitter. Wilson Cary Nicholas was related by marriage to the Smiths; and William B. Giles was a bosom friend of Nicholas as well as a long-time close associate with Samuel Smith. Such

[399] Annals, Tenth Cong., 2nd Sess., 305.
[400] Annals, 1185.
[401] See Adams' Gallatin, 387, for Gallatin's analysis of the vote.

personal elements have large influence, possibly at times the determining influence, on the alignment of individuals and even on the adoption or rejection of public measures.

Coming disasters cast their shadows forward; the vote on the navy bill was the shadow, the appointment of Robert Smith, Secretary of State, the disaster. The selection of Albert Gallatin for the position of Secretary of State was a natural reward for his capable services to the party, to the previous administration, and to the country. But it was not to be. The Smiths and Giles had determined otherwise, and they were the "ruling party." Although called by Gallatin the "file leader"[402] of the discontents in the House, Nicholas did not unite with them in this endeavor. Writing in 1811, Nicholas says, "from the first Mr. Giles disclosed his determination to vote against Gallatin, I repeatedly urged and entreated him not to do it; for several days it was a subject of discussion between us. There was no way which our long and intimate friendship would justify, consistent with my respect for him, in which I did not assail him. To all my arguments he replied that his duty to his country was to him paramount to any other consideration, and that he could not justify to himself permitting Gallatin to be Secretary of State if his vote would prevent it."[403] Nicholas, understanding that the question having the most weight with Giles was that Gallatin was a foreigner, thought that it was too late to make that objection.[404] Next to Gallatin, the person most deserving by party service, both in the Senate and in the presidential canvass, was Giles himself. No one denied, not even his enemies, that he had served the party long and well, and for his services he had as yet received no reward except his senatorial seat. That he should not wish the honor of further advancement, would be to expect of him more than human self-abasement—surely not one of his qualities. But the statement that by temperament he was not entirely suited for administrative position of great delicacy would meet universal acceptance. The endeavor to picture Giles

[402] Adams' Gallatin, 387.

[403] Ibid, 388-9.

[404] That was the reason given by Samuel Smith.

writing cool, diplomatic notes, inflicting the truth but avoiding imprudence or angry expression, is all that is necessary to settle the question of his choice for such a responsible and delicate position as that of Secretary of State. Besides, take away his readiness and eloquence, and who would there be to uphold the true cause in the arena of senatorial discussion? Only a newspaper mention or two and Giles's name disappears from the list of probable cabinet appointees.[405] Except Gallatin, no other man seemed available. Giles and the Smiths, however, were determined to defeat Gallatin and to secure recognition in the new cabinet as the price of their support.[406] If they could not secure the office of Secretary of State, they would take that of Treasury, and they would vote for and accept Gallatin for the office of State if Madison would give one of them the Treasury portfolio. Madison agreed to make Robert Smith Secretary of Treasury, and all went well until Gallatin refused to be a party to that arrangement, and suggested Smith for the higher office. And so the matter stood, Giles and Samuel Smith and their friends accepted Gallatin, Madison appointed Smith with the secret knowledge that he himself would do the work, and the factional difference calmed down.

Congress was called in extra session for the fourth of March in order that the leading appointments of the President might be ratified. Those for Secretary of State and Treasury we have seen. Smith's place at the head of the navy department was to be taken by Paul Hamilton of South Carolina; the Secretary of War was to be William Eustis, patriotic but old and incapable of filling the position to which he was assigned. The Postmaster-General, Gideon Granger, and the Attorney General, Caesar A. Rodney, came over from the cabinet of Jefferson. The one man of capacity was the foreigner whom Giles hated, and that man's superiority and subsequent leadership in the cabinet was suggestive of further danger. One appointment of the President failed of confirmation at this session, that of John Quincy Adams to the court of Russia. Giles, probably

[405] Enquirer, January 19 and Feb. 3, 1809.

[406] Randall says Giles presented to Madison seventeen objections to Gallatin's appointment, III, 357, note.

on ground of personal friendship to the appointee, as well as in obedience to the implied terms of the contract with the President, voted in favor of Adams.

The first session of the eleventh Congress was, according to agreement, to meet on May 22, 1809. Before that day could arrive, the foreign situation had changed much for the better. David M. Erskine had represented the English government in Washington since the recall of Anthony Merry in 1806; believing little in the Tory government of Canning and kindly disposed to our country because of his marriage to an American lady, he carried his good intentions too far, to the extent, indeed, of producing his own recall and the further complication of Anglo-American relations. He misunderstood conversations with Gallatin and received therefrom a wrong impression of Madison's attitude on the English question. He drew from Canning a new set of instructions as a basis of negotiation, and then proceeded, with the best of intentions, to state them in such a way as to conceal all that was offensive in them to our government and to bring out their good points in bold relief. Little trouble was now experienced in negotiating the preliminaries of a treaty, whereby the President should proclaim a suspension of nonintercourse with Great Britain, as he was allowed to do under the act of March 1809, and England was to withdraw her Orders in Council. The English orders were to be void on June 10, 1809 and our trade with England was to begin at once. Rejoicing arose from every American port when the President's proclamation was read, the administration was praised by Federalists as well as by Republicans, ships hurried out to cross the seas.

Congress, therefore, listened on May 23 to the most encouraging message it had listened to for many a session. It heard with pleasure of the "favorable change in our foreign relations, the critical state of which induced a session of Congress at this early period," and proceeded to take under consideration "the revision of our commercial laws, proper to adapt them to the arrangement which has taken place with Great

Britain."[407] The Federalists, though strengthened in numbers, had no grounds of opposition on which to rest their struggle and faction was for the time being in concealment. Giles still deigned to lead the administration forces in the Senate, directed the order of procedure and headed the Committee on Foreign Affairs.[408] On May 29, he brought in a bill "to amend and continue in force" the Non-intercourse Act against Great Britain and France.[409] After re-committment and amendment by the House, it was passed and became law June 28, 1809. Intercourse with Great Britain was therein legalized though some of the provisions of the old act were temporarily kept in force. Giles had proposed the adoption of an act excluding from our harbors the armed ships of all nations.[410] But, for fear that it might hinder the negotiations in progress, Congress postponed it till next session.[411] In a speech on the subject, Giles declared himself "extremely happy to find the spirit of harmony and conciliation which had hitherto characterized the Senate," and promised that he would "endeavor to preserve and continue it." Only one principle—a most significant principle for his future—he insisted on in the arrangements that might be made with foreign nations, that of "strict impartiality toward the belligerents, which he could not be induced to depart from under any circumstances."[412] The chief interest of Giles, as respects other measures, was devoted to the passage of an act relieving from penalties, incurred under the act prohibiting the importation of slaves, those persons who had been forcibly expelled from the island of Cuba.[413] On account of the favorable prospects in our foreign relations, Congress passed acts to suspend the

[407] Richardson, Messages, i, 469.

[408] Annals, Eleventh Cong., 1st Sess., 13 and 14. The standing committees of the Senate did not begin until 1816; select committees prior to that time were designated, to which certain kinds of business were referred. Giles had to deal with military matters as well as Foreign Relations.

[409] Annals.

[410] Annals, Eleventh Cong., 1st Sess., pt. i, 19.

[411] Ibid, 44. See Leib's report on the subject.

[412] Ibid, 23.

[413] Ibid, 34-36. Act of June 28, 1809.

enlistment of recruits,[414] and authorizing the President to lay up "such of the frigates and public armed vessels as, in his judgment, a due regard to the public security and interest will permit."[415] The date of the next session of Congress was fixed for the first Monday in November.[416]

But, before the second session could assemble, the face of the situation had completely changed. News had already been received, first of a new order in council,[417] hardly consistent with the promises of Erskine, and finally a repudiation of the agreement made by that unfortunate minister.[418] Erskine was recalled and "Copenhagen" Jackson, hero of the English tyrannical treatment of Denmark in 1807, was sent to take his place. Madison issued a proclamation putting the Non-intercourse Act again in force as to Great Britain,[419] and then awaited the arrival of Canning's bellicose representative. That individual forthwith sustained his reputation by charging our Executive with having tricked Erskine into his violation of instructions,[420] and, after reiterations of the same offensive insinuations, was told that our relations with him were at an end.[421] To Congress in its second session, on November 9, the President communicated these distressing circumstances. Nothing encouraging, either, could be reported in our negotiations with France; the wily Napoleon, after hearing of the British order of April 26, and Erskine's agreement with our country, had settled on a policy of seizing every American ship within his power.

Giles took charge of the revelations made as to our foreign relations, and, on December 5, came forward in loyal manner with a resolution and a bill. Jackson's conduct was asserted by the resolutions to have been "insolent and affronting" and the President's refusal to receive further communications from

[414] Act of June 28, 1809.
[415] Act of June 28, 1809.
[416] Act of June 28, 1809.
[417] Order of April 26, 1809.
[418] Order in Council, May 24, 1809.
[419] Messages and Papers, i, 473. Aug. 9, 1809.
[420] Letter, Oct. 11. Annals, Eleventh Cong., 2nd Sess., App., 2088.
[421] Smith to Jackson, Nov. 8. Annals, Eleventh Cong., 2nd Sess., App., 2113.

him as manifesting a just regard for the "dignity and honor" of the government and for the "character and interest of the American people." It also pledged Congress to "call into action the whole force of the nation if it should be necessary . . . to repel such insults and to assert and maintain the rights, the honor, and the interests of the United States."[422] The bill authorized the President to enforce the departure of an offending minister.[423]

Speaking on the resolution, December 8, Giles reviewed at length the conduct of the British minister in justification of the epithets bestowed upon it by the resolution and the accompanying bill. No new facts were produced in the speech, but an earnest and eloquent appeal was made for casting aside all party differences in the presence of a national insult. Yet, forgetting not his duty as a constitutional and inevitable critic, he found the cause of the trouble in "our former manifestations of indecision as well as in our unfortunate dissensions and divisions." War, he had little doubt, would come. "American blood," he said, "must be shed, to repel the hostile spirit of Great Britain" and to "wash away the stains of our own unfortunate divisions and dissensions." He begged all to drop their prejudices and rally around the standard of their own country. "Sir," he concluded, in a beautiful spirit of patriotism, "I cannot express to you the pleasure I should feel at my heart, if I could see all irritations banished, and harmony and mutual good will universally pervading all political scenes and all social intercourse. That the present occasion may be improved to this desirable end, is the most fervent prayer of one, who in the present delicate interesting crisis of the nation, feels a devotion for the country beyond everything else on this side of Heaven."

Accompanying this glowing appeal was a strangely ominous encomium on the "dignified character, the high sensibility, and

[422] Annals, Eleventh Cong., Pt. 1, 481.

[423] Ditto. A similar case arose in Jefferson's administration. The Spanish minister, D'Yrujo, insulted Madison and a bill was introduced into the Senate authorizing the President to order the departure of foreign ministers under some circumstances. It was dropped. See Schouler, ii, 122.

the correct intelligence of the Secretary of State."[424] The resolution found no difficulty in passing the Senate on December 11,[425] and, after encountering all the various forms of opposition within the reach of Josiah Quincy and his brother Federalists, passed that body by a very large vote.[426] After amendment, the bill giving to the President power to compel an obnoxious minister to leave the country passed the Senate,[427] but never became a law.

Another message came from the President on January 3, 1810, recommending the enlistment for a short period of a volunteer force of twenty thousand men, and throwing upon Congress the responsibility of determining "how far further provision may be expedient for putting into actual service, if necessary, any part of the naval armament not now employed." No one knew exactly what the President wanted Congress to do. Did he wish effective measures for war, or did he desire little change in the provisions for defence? What light there was appeared in the concluding paragraph congratulating Congress on the fact that the public credit was happily in such a solid state that reliance might be placed upon it if necessary to take any "precautionary measures involving expense."[428] Had the President no ideas on the subject, or did he feel a characteristic delicacy in imposing them on a coördinate branch of Government?

Giles, however, was not like the President; he did have ideas and these ideas he had no timidity in exposing. It became his duty in the Senate as chairman of the committee that dealt with military affairs,[429] to place some construction upon it and to bring in a bill containing some description of policy. On January 10, 1810, therefore, he reported in part a bill providing for the filling out, officering and manning our frigates, and, on the twenty-third, delivered a significant speech defend-

[424] Robert Smith.
[425] 20 to 4—Goodrich, Hillhouse, Lloyd, and Pickering voting nay.
[426] 72 to 41—Jan. 4, 1810.
[427] December 20, 1809.
[428] Richardson, Messages and Papers, i, 478.
[429] See Annals, 11th Congress, Part 1, 479, 520.

ing the bill. He declared, as usual, he did not wish war but feared it might be forced upon us. We must, therefore, he thought, be prepared. He regretted incurring any additional expense but submission would cost us more. Besides, the people, whose will seemed always so precious to him, were looking to Congress for measures of preparation for an apprehended crisis. Not for the first time, Giles affirmed that, although he thought "a war purely defensive alone justifiable, yet he thought it perfectly correct to carry on such a war when undertaken offensively; and that it was perfectly justifiable to seize a territory, and appropriate it as a just retribution for the evils of war justly inflicted by a culpable assailant." In other words we might pay ourselves back for any war with Great Britain we might have by seizing and invading Canada. Such an argument was a few years later to do much to bring on the war of 1812—which, if Giles had had his way, would have been the war of 1810.

As a matter of fact, the time had now come for a break with the administration of James Madison. The policy now pursued by Giles and the Smiths was exactly the same as that pursued in the spring of 1809 when they united with the Federalists in the hated navy coalition. Humored at the outset by the appointment of Robert Smith, they had worked harmoniously with the administration during the first session of the eleventh Congress; but Gallatin had since further offended Robert and Samuel Smith by his castigation of their navy deal. The Jackson crisis had produced a momentary unity, for which Giles appealed, yet the Gallatin influence was constantly increasing and the vacillating policy of the administration failed any longer to form a natural rallying ground. It was, as I have intimated, by no means all the fault of Giles and his friends. Having as much selfish ambition and personal resentment as had other men, they had no less patriotism. A decided policy, a firm voice could have held them at least in an outward loyalty. But this decided policy, this firm voice was exactly what was lacking in the Father of the Constitution, now unfortunately compelled to rule when only such policies could avail. From

1810 to 1815, there was, in consequence, hardly a Republican leadership. There were factions and cliques, and the consistent supporters of the administration itself could hardly be called more than a Gallatin-Madison clique.

Influenced by personal motives Giles undoubtedly was, but he also, no doubt, expressed his conscientious views in the following declaration of war: "The visionary theory of energy was, therefore, the fatal error of the Federal party; and that error deprived it of the power of the nation. The Government being thus placed in the hands of the Republicans, whilst heated with the zeal of opposition to the Federal doctrines, and flushed with their recent triumph, it was natural for them, with the best intentions, to run into the opposite extreme; to go too far in the relaxations of the powers of the Government, and to indulge themselves in the delightful visions of extending the range of individual liberty. They were, therefore, in danger of relaxing the powers of the Government so far as to deprive it of the means of its own preservation and execution for domestic objects, and to impair or to destroy its efficacy in resisting foreign aggressions. The theory, therefore, of the Republicans, as opposed to that of the Federalists, was the relaxation of governmental restraints, or the extension of individual liberty. It was natural that, in the vibration of the political pendulum, it should go from one extreme to another; and that this has been too much the case with the Republican Administration, he regretted to say, he feared, would be demonstrated by a very superficial review of the events of the last two or three years. He said it had been his fortune to oppose both of these extremes; that he thought the true policy of the United States would be found in the medium between these two extremes; that he had steadfastly placed his footing on that ground; and that he should not be driven from it, until he was convinced he had assumed an unwise position."[430]

To Giles, Crawford made answer, and, though supposed to represent the attitude of the administration, asserted that the President's message "in point of obscurity, comes nearer my

[430] Annals, Eleventh Cong., Part 1, 535.

ideas of a Delphic oracle than any State paper which has come under my inspection." It is for war, it is for peace, it is for a large standing army, it is for militia, it "means anything or nothing, at the will of the commentator."[431] However that might be, he was not for this bill. If the nation should be involved in war, it ought to be prosecuted with vigor; "but, until this event should happen, he was opposed to measures which exhausted the Treasury without adding to the real and substantial defence of the nation."[432] Despite these views coming as they no doubt did, with the exception of the criticism of the message, direct from Albert Gallatin, twenty-five senators agreed with Giles and only five with Crawford.[433] Giles, according to Henry Adams in commenting on this result, "impressed the least agreeable qualities of his peculiar character on this Senate."[434]—a striking testimony from a hostile historian to the influence and power of the man. A man who could impress "the least agreeable qualities of his peculiar character" on all but six members of the United States Senate must have had certain other qualities and motives that were not disagreeable; and the Republican party which "as a whole" drew unfavorable inferences as to the motives of a fellow senator in proposing a bill, must have been even worse than the senator himself if with this belief they supported him by an overwhelming vote.

Giles had now shown his independence of the administration; it remained for him to show the same attitude to the faction to which he was supposed to belong. If mere factiousness determined his whole conduct, he would probably have supported the Smiths in their opposition to the so-called Macon Bill number 1, when it came before the Senate. That bill, a cabinet measure, introduced in the House, December 19, prohibited all public vessels of Great Britain and France from entering the harbors of the United States, and all importations from the two belligerent powers and their colonies to the United States unless

[431] Annals, Eleventh Congress, Part I, 544.
[432] Ibid, 547.
[433] Ditto.
[434] Adams, United States, V, 181.

imported directly from them and in American ships.[435] When, after passing the House, it came before the Senate, on motion of Samuel Smith, it was emasculated of everything except the section excluding the public ships of the two nations.[436] Giles did not vote at all but, when, on March 19, it returned to the Senate, he voted against the Smiths and for the administration.[437] On the Macon Bill number II, his only recorded vote was on the side of Smith and the Federalists.[438] Congress adjourned on May 1 and with it the system of commercial restrictions disappeared, except as to the discretion allowed to the President in case either power should repeal its decrees.

During the spring, before the adjournment of Congress, an important domestic event had taken place in Giles's life—a second marriage. While travelling in her coach from the White Sulphur Springs, the first Mrs. Giles had died suddenly at Fincastle, Virginia. There she was interred, and a monument erected by her devoted husband still stands, we are told, in perfect condition.[439] Consolation, however, seems in due time to have been discovered. In the *Enquirer* of March 9, 1810, appeared in the quaint language of that day a letter from Washington under date of February 22, "Mr. . . . ," it said, "is to be married this evening to a most lovely girl, with fair skin, auburn hair, elegant form, a fine intelligent face, and not quite 17—He is as bold in love as in politics—I hope he will be equally powerful— The odds may prove against him—but, for youth, beauty, and innocence combined in a female form, even death itself may be resigned." Further on appears an explanatory notice: "Married—in Georgetown on the 22nd February by the Rev. Dr. Gantt, the Hon. William B. Giles, Senator in the Congress of the U. States, to Miss Frances Ann Gwynn, eldest daughter of the late Thomas Peyton Gwynn, of Virginia." The new wife, like his first, was

[435] Annals, Eleventh Cong., Part i, 754-755.

[436] Ibid, 577, Feb. 21. Smith claimed to do it, however, because he wished stronger measures.

[437] Ibid, 611.

[438] Annals, Eleventh Cong., Part 1, 678. May 1.

[439] Mrs. William Overton. MSS. Memoirs.

descended from the Peytons; she was, indeed, cousin to Miss Martha Peyton Tabb, who had in 1797 married Representative Giles.

The final session of the eleventh Congress began on December 3, 1810. The message told of Napoleon's withdrawal of decrees and of the English promise to withdraw theirs when the French decrees should have actually ceased to operate. The proclamation for the occupation of West Florida was laid before Congress.[440] These two portions of the message were turned over for report to the Committee on Foreign Affairs, over which Giles still presided.[441] Without delay, he brought in a bill extending the boundary and laws of the Territory of Orleans to the Perdido River. But, leaving Washington immediately, he did not participate in the discussion of the bill, the burden of the debate being borne by two senators naturally interested in western affairs, Senators Clay and Pope of Kentucky. To the Federalists, the whole procedure of the President had been unconstitutional and arbitrary, and the bill proposed was unwarranted. Clay and Pope, expressing no doubt the opinion of Giles as well as themselves, boldly contended that West Florida had been ours since the treaty of 1803, that the authority of the President to occupy the region was well grounded, both in statute and in Constitutional law, and that occupation, was, at the present time, expedient. The bill, however, by the end of the year had been given up. But the House, during the same period, was discussing a bill for the annexation of Louisiana with boundary extending to the Perdido, the limits of the President's October Proclamation and of the Senate bill. However, in order to secure the passage of the enabling act[442] for the admission of Louisiana, the eastern boundary had to be limited to the Iberville, though at the time of the actual admission in 1812, the boundaries were arranged to include most of West Florida.[443]

[440] Richardson, Messages and Papers, I, 483-484.

[441] See note on page 151 above.

[442] Act approved Feb. 20, 1811.

[443] To the Pearl River, Act approved April 14, 1812.

A measure much more interesting to us and much more important to Giles's career was the bill for the renewal of the charter of the Bank of the United States. The period for which this famous institution, parent of many fierce party conflicts, was incorporated would expire on March 4, 1811. Historians are all agreed on the facts of its success as a financial enterprise and its usefulness as an agent of the government. But the dangers which had been feared at the date of its incorporation had not been forgotten; all the old objections to it were now recalled, and, when it sought a renewal of its charter, were to rise again and others were to appear, provoked by the financial tendencies of the period.

As early as March 26, 1808, the stockholders had petitioned for a renewal of their act of incorportion; the House had, in April, 1810, discussed several plans for that object but had adjourned before taking final action. On the 18th of December, 1810, a petition was presented by Mr. Leib, one of the senators from Pennsylvania and a member of the anti-administration faction, signed by the President and Directors of the Bank of the United States, praying for a renewal of their charter. The matter was referred to a committee, whose chairman was William H. Crawford, and other memorials[444] for the same purpose were handed over to the same committee. Memorials were likewise received against the proposal in both Senate and House,[445] including one from the Legislature of Virginia. As an illustration of the avowed attitude of certain states and as having, also, an important relation to important subsequent developments in Giles's career, it is not without value to quote this memorial of the General Assembly: "The General Assembly of Virginia view with the most serious concern the late attempts which have been made to obtain from Congress a renewal of the charter incorporating the Bank of the United States:

"This Assembly are deeply impressed with the conviction that the original grant of that charter was unconstitutional; that Congress have no power whatever to renew it; and that the

[444] Annals, Eleventh Cong., Third Sess., 31, 87, 112.

[445] Ibid, 118, 705, 828.

exercise of such a power would be not only unconstitutional, but a dangerous encroachment on the sovereignty of the states; Therefore, Resolved, That the Senators of this State, in the Congress of the United States, be instructed, and our Representatives most earnestly requested, in the exercise of their duties, as the faithful Representatives of their country, to use their best efforts in opposing, by every means in their power, the renewal of the charter of the Bank of the United States."[446]

It will at once be seen that no accusation of a misuse of its power, no charge of mismanagement was made, but that the opposition was placed exclusively on theoretical grounds. The resolutions of Pennsylvania were of the same character. Was it then true that opposition to this measure so much desired by many citizens and deemed so necessary by the able secretary of the Treasury, was due purely to a love of the Constitution? As a matter of fact, where men's language is most profuse in the expression of constitutional scruple, their minds are usually most immovably fixed on certain practical concerns. If Madison, the Father of the Constitution, and the author of the Resolutions of 1798, was not alarmed for fear of an irretrievable injury to the great charter of our liberties, it may be certain that the legislatures of Virginia and Pennsylvania did not feel as grave concern on that subject as they felt on something that touched their interests more closely. The Bank of the Potomac, the Bank of Alexandria, the Bank of Washington, and other banks to be established in the District of Columbia, were, at this session of the Congress, praying for charters.[447] Hundreds of banks were chartered by state legislatures and these banks were allowed to issue bills of credit.[448] Numerous private banking institutions had sprung up in Virginia without charters and these issued notes. Not only were thousands of citizens in this way thrown into competition with the Bank of

[446] As a further illustration of Republican feeling in Virginia, see Virginia *Argus*, Feb. 8, 1811—The "temporary, unlawful influences, and unlawful practices that have been interposed to bias Congress has not been equalled in the oldest and most corrupt government of Europe." It asserted that the renewal of the charter would shake if not destroy the Republican party.

[447] See Annals passim.

[448] The Bank of Virginia, The Farmers' Bank, etc.

the United States and, not unnaturally, little desirous of the recharter of that enterprise, but a number of states including Virginia were stockholders in local Banks.[449] And where the states themselves were not directly interested, members of the state legislatures were. Who would, therefore, profit if the United States Government had to turn elsewhere for depositories for the public funds? Very appropriately, therefore, did Virginia, Pennsylvania and Kentucky protest that an act of incorporation of the United States Bank would be an infringement of the sovereignty of the states.[450]

The Legislature of Virginia had spoken, the newspapers took up the cry. The *Enquirer* and the *Argus* of Richmond sounded the orthodox Republican note, and on February 14, 1811, Giles arose to express his opinions. He arose, he said, under peculiar embarrassment arising "from a conviction that the views of the subject now proposed to be exhibited will disappoint the expectations both of the opposers and the favorers of the bill, and that they will not be acceptable to either." However, he announced to an audience undoubtedly not surprised to receive the information, "that he should not depart from his invariable habit," when urged by duty to participate in debate before this honorable body, "of disclosing in the most undisguised manner my real opinions upon the whole subject, free of any consideration of political difficulties or inconveniences which may consequently affect myself." Proceeding, he entered into a confusing labyrinth of constitutional discussion, intended to prove that the government of the United States was equipped by the constitution with sufficient powers for its maintenance and to justify the adoption of strong measures by the administration of Jefferson, and, at the same time, to show that it did not contain authority for the establishment of a National Bank. So far had he advanced from the old strict construction ground of 1791 or 1798 that he bewailed the fact that "gentlemen should be delighted with curtailing the Constitutional powers of the Government and enfeebling its necessary energies." And

[449] Speech of Fisk in the House, Annals, Eleventh Cong., Third Sess., 612-613.

[450] Speech of Crawford, Annals, 143.

he now was actually afraid that we had swung so far away from the Federalist tendency to consolidation that "the Government will fall to pieces from the want of due energy in the administration of its legitimate powers, or that some extraordinary means must be resorted to for its resuscitation." The present administration was the subject of frequent thrusts throughout the speech because of "the inefficacy of our measures to repel foreign aggressions, to assert our rights, and to do ourselves justice," and because of "its inactivity and feebleness." Not from any defects of powers in the Constitution did these things exist, "because in that respect they were unlimited," but because the Republican administrations have "theorized and criticized themselves into such fears of the undue exercise of power, that they will not duly exercise it when indispensably necessary to the national character and interests," because of the unwillingness of gentlemen "to act up" to "the fair and candid interpretation of" the meaning of the Constitution. Then why in the name of the Constitution object to the legality of the Bank? The answer was ready—in the language of earlier days, because the power of incorporation "is not among the common, necessary and proper means of effecting either of the foregoing enumerated powers," etc.

So much for the constitution, which, to Giles, throughout the years, had taken on a different character from that which he attributed to it in the enthusiastic days of a struggling Republicanism. Why was a Bank inexpedient? Because "Seven tenths of the whole stock are held by British capitalists." And Giles could see "neither the policy nor the expediency of extending these favors and advantages voluntarily to these foreigners for twenty years in exclusion of our own citizens." But further: "My objection," he says, "arises from the enormous British influence which notoriously pervades this country; and I believe, affects the proceedings of Government so seriously, that it can hardly be said to be independent. I verily believe, that this baleful influence has already driven the Government from measures which the best interest of the nation required." All the diversified influences from identity of language, legal precedents,

intermarriages, etc. are given "a body and form for action" by the interest of British captialists in the National Bank. This sounds like the speeches againt the Jay Treaty, the opposition to Alexander Hamilton, and the attack on the administration of John Adams. The state of Virginia had, as we have seen, instructed him to vote against the Bank; this he did. He was willing to obey—because they and he thought alike on the subject of the bank. But, in the speech we are now considering, he took occasion to give his theories of the right of a state legislature to instruct its representatives. During the progress of the debate, senators had explained their attitude by reference to instructions from their legislatures which they thought required obedience. Differing no whit from his legislature on the subject of the Bank, knowing that he would have "to encounter strong and honorable and perhaps insuperable prepossessions" against his opinion in the state he had the honor to represent, fearing nothing, helpless to conceal his views on a constitutional question whether they would hurt or hinder, were needed or were even superfluous, he went on to expose to "the people" the danger, in his opinion, threatening the "due administration of this Government," regardless of any consequences to himself upon the political arena. For, whatever the imperfections of the man—and they were not few—he could in leadership repress his prejudice and peculiar views for the good of the party, but in opposition he was willing to stand alone against the world. He denied the mandatory character of instructions:- a senator was, he thought, not compelled to vote according to the bidding of his legislature although the state had a right to issue instructions in an advisory capacity and in certain cases might do so with profit, yet the use of instructions as a frequent thing was conducive of great evils. It introduced into the Senate too large a measure of local feeling and opinion; it tended to restrain "the free exercise of opinion;" if extensively indulged in, the result might be the destruction of the Senate's power to achieve anything. While feeling "the most unbounded confidence" in the wisdom and the patriotism of the legislature of Virginia, "he considered himself the representative of the people

of the United States, delegated to that character by the Legislature of Virginia." He did, indeed, demolish the doctrine of the mandatory character of legislative instruction for United States Senators, but he came very near demolishing his own career as a public servant.

Giles's speech did not, apparently, make a favorable impression. Henry Clay,[451] who followed him on the same side of the question, could not resist the temptation to create a laugh by accusing Giles of proving both sides of the question.[452] And John Randolph, who now had good reason to hate the Senator, although they had been the closest of associates, said in a letter, "Giles made this morning the most unintelligible speech on the subject of the Bank of the United States that I ever heard. He spoke upwards of two hours; seemed never to understand himself (except upon one commonplace topic of British influence), and consequently excited in his hearers no other sentiment but pity or disgust. But I shall not be surprised to see him puffed in all the newspapers of a certain faction."[453]

Whatever our judgment as to the character of the speech, there can be little criticism of Giles's vote. His state was against the Bank; his record was against it. However much his attitude might be attributed to factiousness and to the influence of friendship for Samuel Smith and of enmity for Albert Gallatin, although he voted as faction would require, he would undoubtedly have voted the same way had he played to no faction. On the 20th of February, the Senate killed the bill,[454] the Vice-president casting the deciding vote, and, in defence of his action, reading a speech written for him by Caesar A. Rodney of Delaware.[455]

The opinion of the Legislature of Virginia was of more significance to Giles than were the opinions of Henry Clay and

[451] Clay also acted under instructions.

[452] See Annals, Eleventh Cong., 3rd Sess., 209.

[453] John Randolph to Judge Nicholson, Feb. 14, 1811. Adams' Gallatin, 430.

[454] Annals, 346.

[455] Civil History of the War of 1812—National Intelligencer, Aug. 8, 1857.

John Randolph. Both Senators from Virginia had angered the legislature: Richard Brent by voting contrary to their desires,[456] Giles by denying the binding character of the instructions, which, however, he followed. The doctrine of instructions was precious to Virginia; they had used it before—once even Senator Giles drafting the resolutions sent by the Legislature to their senators[457]—and were often to use it again. It was to Virginia a bulwark of liberty, a protection against consolidated government. Whoever touched this sacred ark of freedom was deserving of death.

The great Democratic organ of Virginia upheld it against attack,[458] and public meetings toasted it as a cardinal right of the people. Writers took up their pens in its defence. The legislature could not remain silent in face of the insult inflicted on itself, and dared not allow such unorthodox opinions to go unrebuked. In January, John Tyler proposed in the House of Delegates resolutions of censure against its rebellious Senators:[459] these gave way to a substitute by Benjamin Watkins Leigh, which was adopted.[460]

To these resolutions, Giles made answer in an able letter of defence, dated November 26, 1812, and published for distribution.[461] Had this disagreement between Senator Giles and the General Assembly of Virginia occurred before his reëlection to

[456] Annals, 346. Brent also thought instructions on Constitutional questions were not binding, 270.

[457] In 1800.

[458] Enquirer, May 17, 1811, etc.

[459] Tyler's Lives and Times of the Tylers, i, 274-275. Journal of House of Delegates.

[460] Journal, House of Delegates, 1811-1812, (155-159) Feb. 19, 1812. Leigh desired to shield Brent and did not wish to "join in trampling any man [Giles] under foot, however I may dislike him, who is already prostrate on the earth." The resolutions seem to have been aimed at Giles not so much for his attitude on the Bank as because of his anti-administration attitude. Giles's enemies, "not knowing how to get at him upon the new ground," writes Leigh, in December, 1811, "would willingly attack him upon the old one, rather than not attack him at all." In such a case Brent would have to be brought in. See Leigh to Monroe, Dec. 12, 1811. Monroe MSS., Lib. of Cong.

[461] Letter from Wm. B. Giles, Esq., Senator in Congress, To the Honorable the Legislature of Virginia, Washington, 1812, p. 29.

the Senate, that event would doubtless not have taken place. The Senatorial election had occurred January 2, 1811, and the incumbent had received the flattering vote of 123 to 15. But, from February 14, his popularity in Virginia had dwindled to nothingness. The people, in their meetings, not only upheld the doctrine of instructions, but censured their Senators and threatened their continuance in office.[462] The *Enquirer* soon took up the fight against the man who neither represented his state nor supported James Madison, and the statesman who had been toasted and praised became in the course of a few months the most unpopular man in the commonwealth of Virginia.[463]

But Giles was not the only official in trouble. By the end of the eleventh session of Congress, the position of the administration had become acute. It was unable to secure the adoption of its cherished measures, and it floundered helplessly among the rocks of opposition. The rock of offence was the feud of Gallatin and the Smiths, and the remedy would have to be the destruction of one or the other of the belligerents. Randolph's diagnosis of the case was correct when he said: "Things as they are cannot go on much longer . . . Nothing then remains but to lighten the ship, which a dead calm has hitherto kept from going to pieces."[464] The Smiths, Giles and their friends also thought it necessary to lighten the ship, but their way of lightening it was to force the sacrifice of Gallatin. As early as 1809, that distinguished financier had agreed to withdraw but had not been allowed to do so and now he was ready once more to yield the fight.[465] But that was not to be—Duane and the *Aurora*, Ritchie and the *Enquirer*, Robert and Samuel Smith, Giles, Leib, and German might pray and intrigue for it, but it was not to be. Through Senator Brent, Giles's colleague, Monroe was sounded on his willingness to accept the position of Secretary of State. Urged by John Taylor,[466] his friend and

[462] *Enquirer*, June 4, July 11, etc., 1811.

[463] Ibid, May 17, 1811, May 22, Nov. 14, 1812, Nov. 26, Dec. 11, 1813, etc. Leigh said, "Mr. Giles is down-down—lower than it has entered into your imagination to conceive. He is detested—abominated."

[464] Adams, U. S., V, 361.

[465] Adams' Gallatin, 434. Letter to Madison.

[466] Branch Historical Papers, June, 1908.

counsellor, he agreed to take office for the sake, if possible, of preventing war. All then necessary was to dispose of the incumbent, who, forthwith, was told that his services and conduct were unsatisfactory to the administration and that he could have the mission to Russia if he desired. This offer he finally declined to accept but his withdrawal from the position of Secretary of State was effected and Monroe became Secretary under his rival of three years before. All of this had been accomplished before April 2, when the new official began to discharge his duties. The administration was saved, the enemy discomfited, but the fight on Gallatin was not discontinued.

Not an indifferent observer of these conflicts was the Republican ex-President. In March, 1810, Jefferson had, in a letter to Doctor Walter Jones, deplored dissensions in the cabinet.[467] In letters in March and April, 1811, in stirring terms he appealed to Duane's party loyalty. The opinion of the people of Virginia, like his, he thought, was with the administration.[468] Ritchie's course also worried him. Although generally loyal to Madison personally, the great Virginia editor could not bear the Swiss financier. Even after Jefferson's remonstrances through Wirt,[469] the *Enquirer* gave its reasons for an opposition to the Secretary. They were his interference in our foreign relations, and in the measures of Congress, and his support of the United States Bank. Ritchie would have been glad had Gallatin and Smith retired at the same time.[470] But ten days before this editorial, Ritchie had opposed the appointment of Monroe on the ground of his negotiation of the Treaty of 1806.

To Giles and General Samuel Smith, also, Jefferson's friend, Nicholas, was to write "very serious and urgent letters . . . on the course pursued by them."[471] But, for these gentlemen, there was to be no cessation until they too should be compelled to leave the positions of influence they occupied. Equally with Madison and Gallatin they believed

[467] Jefferson, Writings (Ford), ix, 273.
[468] Letters, March 28, and April 30, 1811. (Ford), ix.
[469] May 3, 1811.
[470] *Enquirer,* May 21, 1811.
[471] Jefferson, Writings (Ford), ix, 379.

themselves the victims of intrigue, and as conscientiously they persuaded themselves that in the course they pursued lay the path of duty and in the measures they suggested the safety of the nation. The letter following[472] is of interest in the history of the imbroglio. It points to Gallatin as the real source of trouble and exhibits the friendly relations between Secretary Smith and the Virginia Senator.

Wigwam Virginia.
July 5, 1811.

"Dear Sir,

In consequence of my absence from home, I did not receive your friendly and highly valued favor of the 18 ultimo, till the day before yesterday; and I now embrace the first opportunity of making a reply. It was then accompanyed with your public vindication. The rupture between yourself and Mr. Madison, has been a subject of the most serious regret to me; but not a surprise. For Mr. Madison I have long felt the warmest friendship, and the most affectionate regards; and since his elevation to the presidential chair; it has been a subject of the most painful recollection to have been compelled to see him the sport and support of the most unprincipled parasites, and the dupe of the most wretched intrigues. However lamentable the fact is, it has been too obvious to be denied by his most partial friends; and I have for some time intimated to some of my confidential friends; that republicanism was not safe in his hands. But where will the party look for a successor? The spirit of jealousy and rivalship, will defy every effort. The nomination of Colo. Monroe, is the wickedest of all his contrivances. In this part of the country, it will not get him one friend; and it will cause him many opposers, etc., etc., etc. I think you have taken the best ground in your vindication, to tell a plain unvarnished tale; and leave the public to make the conclusions. It is not yet sufficiently in circulation here, to enable me to form any estimate of its effects; but I should suppose, that they can but be highly injurious to Mr. Madison's standing, etc. As far as Mr. M's late acts may have been

[472] MS. in possession of the Historical Society of Pennsylvania.

intended or calculated to effect myself; it is matter of perfect indifference to me. If they were intended to produce my resignation; or to vary my course of public conduct; or to intimidate me into an acquiessence in measures, I disapprove; they will miss of their object. Like most other injudicious expedients, they may produce an opposite effect. You know that I never would accept any Executive office; I feel as independent in my representative character, as Mr. M. in his presidential one; and of course he has no inducements to offer, because I have no wish to accept, etc., etc., I have heretofore withstood many buffettings & do not feel less competent to their repulsion now, than heretofore. But of this enough. So far as respects myself, I regret nothing so much as the probable absence of yourself and Mrs. Smith from the city during the next session of Congress.

Be pleased to present me to Mrs. Smith in terms of the most respectful regards & believe me to be your most sincere friend, etc.

Wm. B. Giles"

The Honorable
Mr. Smith

CHAPTER XI

THE WAR OF 1812: TRIUMPHANT INSURGENCY

In the twelfth Congress, one of the first duties which Giles had to discharge was to oppose the nomination of Monroe for the position of Secretary of State. He had, at one time, been a most ardent friend of the Secretary, but had taken active part in the campaign for Madison in 1808 and industriously endeavored to discredit the ex-minister to England. His opposition to Monroe had not grown less as his antipathy to Madison had sprung up, because Monroe had displaced his friend, was a peace man, and truckled too much to the administration. The reason for opposition, however, to the confirmation of his nomination was now, according to Monroe, a "supposed favoritism in the settlement of my account in my late mission to Europe." The nomination was referred to a committee, of which Giles was chairman; a thorough examination of the charges was made; and Giles, expressing himself as satisfied, drew up the report in exoneration of his fellow Virginian.[473] This, however, did not mean a cessation of attack on the Secretary; Monroe was from this time on to be added to the list of Giles's enemies, a list almost as long as Mr. John Quincy Adams drew up of his own favorite antipathies.[474]

Congress met, on the call of the President, a month earlier than usual. It is a gloomy picture which on November 5, the Executive unfolded for Congressional examination. Stubbornly assuming that the French decrees had been repealed by Napoleon, he lamented the fact that England had not abolished her own—indeed had gone so far as to threaten retaliation should we continue against them nonimportation. "Indemnity and redress for other wrongs have" he said, "continued to be withheld, and our coasts and the mouths of our harbors have again witnessed scenes not less derogatory to the dearest of our national rights than vexatious to the regular course of our

[473] Monroe, Writings (Hamilton) v, 194: Mass. Hist. Soc. Proceedings, 3rd Series, vol. ii, (letter to John Taylor, Nov. 30, 1813.)

[474] Memoirs, ix, 263.

trade." Then followed a reference to the affair of the President and The Little Belt in the preceding May. Despite the insistence that France had repealed her decrees, the relations of our country with that nation, as the President described them, were far from satisfactory. She had given no proof "of an intention to repair the other wrongs done to the United States," she had failed to indemnify us for seizures of our property, and had placed "rigorous and unexpected restrictions" on our trade.

While no friendship was expressed for France, the burden of the appeal of the message was against the hostile acts of England and it was with particular reference to her that the following warlike paragraph occurred: "With this evidence of hostile inflexibility in trampling on rights which no independent nation can relinquish, Congress will feel the duty of putting the United States into an armor and an attitude demanded by the crisis, and corresponding with the national spirit and expectations." He then recommended provision for "filling the ranks and prolonging the enlistment of the regular troops," and for the acceptance of volunteers. Again the paragraph with reference to naval preparations was vague enough to warrant any interpretation one might put upon it.[475]

The message seemed to breathe war against England and there were those in Congress who rejoiced in their hearts at the words of the peace-loving president, and who determined they would permit no retreat from that position. Henry Clay, the speaker, Peter B. Porter, Chairman of the Committee on Foreign Relations, and the two other members of that committee most important, John C. Calhoun and Felix Grundy, and a group of the young and enthusiastic members from the south and west, Indian fighters, interior men, small farmers, had no intention of adjourning this session of Congress until they had heard a declaration of war. They had seen war postponed from year to year; commercial regulations, embargoes, non-intercourse, Macon bills, proclamations had come and gone and a settlement of the troubled foreign relations of the United States was still in the distance. Ever since the Chesapeake

[475] Richardson, Messages and Papers, 1, 491.

outrage, insistent Republicans, such as they, had demanded strong measures against the mother country. But one peaceful President, admitting that the country had never as in 1807 been so stirred since Lexington, had thought one war enough for the life of one man and preferred to teach Europe the effectiveness of commercial retaliation. Another Republican President had come—a President elected partly by Federalist votes, praised by them as a national and not a party President, put in office for the distinct purpose of paying the national debt and constitutionally opposed to strong measures. A war party of western men inspired chiefly by their expansionist feeling, by their resentment of Canadian monopoly of the fur trade, and by British policies toward the savage tribes, had been formed as early as 1809, and to it belonged also radical, expansionist, malcontent politicians of the east. Clay and his frontiersmen found ready response in the hearts of Ritchie, Roane, Nicholas. To this party, Giles belonged by temperament and accident. Newspapers had supported them and every new aggression had given them argument. Now they were in the saddle. The election, as prophesied, had resulted in the retirement of many conservative statesmen, and insurgents had now their opportunity. Western Tennessee, western New York, western Pennsylvania, Kentucky, upper South Carolina, Indian fighters and warhawks, for the first time were to control the nation. No time was to be lost. They seized the reins of authority in the House; chose Clay speaker on his first day of service in the House, and Clay placed his biggest warhawks on the Committee on Foreign Affairs.[476] Porter of New York, the chairman, on November 29, in his report, gave the keynote of the session when he said, "the period has arrived, when, in the opinion of your committee, it is the sacred duty of Congress to call forth the patriotism and resourses of the country," and, in the words of the President himself, recommended "that the United States be put into an armor and attitude demanded by

[476] For an account of the rise of this war party, see in Am. Hist. Association Report for 1911, a paper by the present writer on "The Insurgents of 1811."

the crisis, and corresponding with the national spirit and expectations."[477]

The House proceeded to discuss the report and resolutions of the committee. The Senate, in the meantime, had not been idle. Giles, as usual, had been put at the head of the Foreign Relations Committee,[478] despite his break with the administration. He had been a warhawk since the passage of his enforcement bill in 1809. He had been steadily pleading for energy of action and bemoaning the feebleness of our councils. He demanded larger preparation for the war, which he believed would come, than the administration then desired, determined apparently as were now Clay, Calhoun and Grundy to force the hand of Madison and Gallatin. He had already glanced with covetous eyes on the British possessions in the north, deeming them a proper indemnity for all our expense and trouble. Now his time had come and he intended not to waste the opportunity, even if he did propose inroads on the cherished financial collections of the Treasury. By December the 9th, his report was ready, four bills had been prepared and were now read in the Senate.[479] One bill called for the raising of twenty-five thousand men for five years' service; this was fifteen thousand more men than the President desired. The bill, therefore, met serious opposition in the Senate on the ground that so many troops could not be raised in time for the expected invasion of Canada in May. The adherents of the administration, therefore, endeavored to secure an amendment to the bill reducing the number of troops provided for from twenty-five to ten thousand. On this proposal, Giles spoke December 17 in defence of his bill.

Hurling at the administration its own call for strong measures, he declared he understood that portion of the message to mean "that all the inefficient measures, which have been adopted in relation to the belligerents for three years past, had not answered the expectations of their projectors; but, instead of the expected recession, had produced, on the part of Great Britain at least, inflexible hostility." The President now called

[477] Annals, Twelfth Cong., Part I, 373-377.
[478] Journal of the Senate, 22.
[479] Annals, Twelfth Cong., Part I, 29 and 30.

for adequate measures and properly left the exact number of the forces required to Congress. The Committee had taken into consideration the whole situation, both the possible demands in the southwest and the demands in the north and had provided for a force no larger than adequate for the purposes of government. The provision of only ten thousand desired by friends of the administration would convince England that we were "joking" about war, would be "as much trifling with the energies of the nation, as inefficient commercial restrictions had heretofore been trifling with the character and interests of the nation, and he feared a war dictated by the same unfortunate imbecile spirit and policy." Why were men thus feeble? Because of the decrepit state of the Treasury. But that was not the previous language of the Department; the Secretary had told us there would be "an economy in furnishing means sufficient to effect your objects." Doing less meant "prodigal waste and profusion of economy." This was also Giles's opinion.

Following this shrewd thrust came an attack on the Secretary. On the subject of the splendid financial talents of that gentleman, which were so much vaunted, he was not slow to express himself, for he preferred to see facts rather than hear much rumor and anticipation. But the Secretary, said his friends, had never had a proper field of activity; then, said Giles, give him scope for action. As for the past, he believed, "that all the measures which have dishonored the nation during the same time (the last three years) are, in a great degree, attributable to the indisposition of the late and the present Administration to press on the Treasury Department, and to disturb the popularity and repose of the gentleman at the head of it." To him was due the inexecution of the embargo,[480] and the failure to adopt more energetic measures in its place.

To one other interesting topic, Giles gave attention in this speech. When gentlemen imputed to him a wish to bring about war, did they think he was "blind to his own interests," or "the interests of those inhabiting the same scene of country with

[480] This, of course, was not a fact. Gallatin had drafted Giles's bill of January 9, 1809.

himself?" Peace and commercial freedom was to their interest. They exported grain and that article was always in demand in England and drew high prices. No, he and his people did not desire war, but they desired "preparation to meet unavoidable war."[481]

The speech above described was vituperative—was by no means an admirable production of oratory. But that it deserves the description accorded to it by Mr. Henry Adams, whose *bête noire* Giles appears through every volume of Adams's works to be, as "unparalleled in American history" for the "malignity of the human mind,"[482] cannot be defended. The oratory of Charles Sumner, for instance, and the Diary of John Quincy Adams, if not characterized by malignity of the human mind, are redolent of expressions whose bitterness Giles could not surpass. Giles was bitter, characteristically so, and his bitterness was inexcusable, on this and many other occasions, but bitterness is a product of no age or section—it appears in any vigorous debate and in most family biographies and sectional histories.

Giles's bill passed the Senate December 19. Twenty-one Senators voted against substituting ten thousand for the twenty-five thousand soldiers required by the bill.[483] The House, which had now already passed Porter's resolutions, took up on December 31, Giles's bill. The House Committee cut down the number of additional troops proposed in the bill from twenty-five thousand to fifteen thousand. However, in the House, the sentiment was in accord with Giles that a large army was necessary. Clay declared "in measures relating to war it is wisest, if you err at all, to err on the side of the largest force."[484] Robert Wright of Maryland said "our country was too important, and our rights too sacred, to be frittering down measures for their defence in the manner proposed."[485] Troup of Georgia declared if we did not want tweny-five thousand men, we did not

[481] For the speech see Annals.
[482] Quoting G. W. Campbell—Adams, U. S., vi, 151.
[483] Annals, 84.
[484] Annals, 597.
[485] Annals, 608.

want one man.[486] Calhoun thought, "We ought to submit, or make energetic defence. He perceived that the public sentiment began already to doubt whether Congress was really in earnest, from the tardiness of their movements."[487] The vote taken January 6 showed ninety-four members of the House for the large force as against 34 for the less, most of the Virginia delegation voting for the larger number. The House had, however, so amended the bill as to diminish the number of officers immediately to be appointed.[488] But, when the Senate insisted, the House yielded, and Giles's bill became law.[489]

One measure looking to war had, therefore, been passed. On December 26, Porter introduced a bill into the House authorizing the President "to accept and organize certain volunteer military corps" not exceeding fifty thousand men to be enlisted for one year. After much argument on the constitutionality of authorizing the President to accept volunteers for possible service out of the country, the House passed the measure. This time, however, Giles and the young warhawks parted company. On January 29, 1812, he spoke in the Senate against the bill. He believed the war would have to be conducted with regular troops; for that reason, he had carried through Congress the bill requiring twenty-five thousand additional troops. The present proposal would involve a useless expense on the Treasury, and would place at the disposal of the President an authority that was purely nominal. The volunteer laws had not been successful and there were insuperable obstacles in the way of raising such a volunteer force as the bill required—one of militia companies instead of individuals recruited directly by officers authorized for the purpose. It is interesting to see William B. Giles, once so stern an enemy to anything bearing resemblance to a regular army, now energetically defending both the constitutionality and expediency of such a force. It is also interesting to see an old Republican, formerly so narrow in constitutional interpretation and later to be of the same

[486] Annals, 616.
[487] Annals, 616.
[488] Annals, 609.
[489] Annals, 718, 97; Act approved January 11, 1812.

spirit, defending the constitutionality, though not the desirability, of employing the militia for service in a foreign state. Since the Republican victory of 1800, under the pressure of the measures demanded for the promotion of the policies of Jefferson, only one trace of the old strict construction spirit remained in the distinguished Virginia senator, and that was the inveterate hosility to a National Bank whenever and however presented. Now with him it was always energy, the use of the powers of government in meeting insurrection at home and aggression abroad, for which he zealously pleaded. Inconsistency, however, is the statesman's privilege; James Madison, James Monroe, Henry Clay, and John C. Calhoun had illustrated the principle or were to do so in the future.

Not the least entertaining portion of this interesting speech is the citation of a distinguished authority by whom to substantiate Giles's views in opposition to volunteer forces and short enlistments. This authority was no other than George Washington himself and the citations were to the famous life by the distinguished Chief Justice. Giles admitted that in his youthful political days when he "was surrounded by visionary theories, and had had little experience" he had doubted the superiority of Washington as a statesman; but now the Senator confessed that "a more intimate acquaintance with his character and his measures; further information and reflection; and practical experience of more than twenty years, had completely convinced him of the superiority of the talent of this great man as a statesman as well as a soldier," and had also admonished him of his former errors. While he could not "subscribe to all the measures of his administration, yet, take him for all in all," he feared "we shall ne'er see his like again." With this apology for "former errors," the orator proceeded to quote at length from Marshall and Washington on the impossibility of relying on an "individual patriotism" and "temporary armies."[490] There were, however, few to agree with

[490] The speech is given in full in Annals for the first session, part ii, Appendix, 1693.

Giles on this occasion, even though George Washington was his reliance—and the Volunteer bill became a law.[491]

An additional force of regulars had been authorized, authority for the enlistment of volunteers given, but the defence on water remained unprovided for. As early as December 17, Langdon Cheves of South Carolina, chairman of the Committee on Naval Affairs and a new order of Republican, had made a report to the House and presented a bill.[492] Exactly one month later, this bill came up for discussion and was defended by him against the errors and prejudices of his Republican brethren, who had not forgotten their position in 1798. The committee called for the building of twelve seventy-fours and twenty frigates. The House struck out the provision for the building of the frigates,[493] and sent the bill over to the Senate. On the 21st of February, Giles reported the bill with amendments. His speech on the subject is not given; though, from the speeches that follow, we know that it was in defence of the navy on the one hand and of the record of Giles on the other.[494] The Federalists were pleased with the speech; the administration leaders were not. On the subject of the navy, we have seen on frequent occasions that, since the Revolution of 1800, Giles had accepted this portion of the Federalist programme of energy so heartily condemned in former years. Smith, Giles, and the Federalists failed in their attempt to incorporate the section, rejected, as we recall, by the House, providing for the building of frigates. An act was finally passed authorizing the President to repair and put in service only the frigates Chesapeake, Constellation, and Adams, and giving him only three hundred thousand dollars for that purpose.[495]

Before the approval of this bill, it became apparent that war was inevitable. On November 7, 1811, had occurred an event very significant for westerners and expansionists—Harrison's campaign on the Wabash. By it was afforded just the needed

[491] Act of February 6, 1812.
[492] Annals, 553.
[493] Annals, 986.
[494] See Speeches of Lloyd and Crawford, Annals, 145, 149.
[495] Act approved March 30, 1812, 1st section.

opportunity to emphasize the necessity of the conquest of Canada for the purpose of securing our frontiers and smoothing the way for our westward advance. Events piled one on another during the spring of 1812. On March 9, the President submitted to Congress the John Henry correspondence, revealing the activities of a British agent in New England in 1809.[496] The ever watchful insurgents failed not to see the connection between intrigues from Canada in New England and intrigues with the Indians of the west from the same quarter. An inkling of the serious nature of Foster's warlike instructions dated January 28 soon stirred the capital city.[497] Two days later came news confirmatory of all fears as to Napoleon's ignominious duplicity and the days that followed brought information only of an inflammatory nature. Something indicative of an intention to recognize the gravity of the situation must certainly be done; on March 15, Henry Clay laid before the President a warlike programme and let it be understood that Presidential action was expected.[498] So on April 1, Madison addressed to Congress a brief message recommending an embargo of sixty days.[499] In the House a bill providing for an embargo was passed the same day by a vote of 70 to 41;[500] in the Senate, without division, the period was extended by the Peace men from sixty to ninety days and the bill was then carried by twenty to thirteen. Giles, Smith, and the Federalists voted in the negative. The House concurred with the Senate.[501] The President could only complain and explain;[502] aside from the opportunity afforded for the return of the New England ships before a declaration of war, the amendment made little or no difference.

From the middle of April to June, little was done by Congress. The Senate actually adopted a joint resolution providing for the adjournment of Congress from the 29th of April

[496] Annals.
[497] Adams, U. S., vi, 191.
[498] Monroe Papers, Library of Congress.
[499] Richardson, Messages and Papers, i, 499.
[500] Annals, 1598.
[501] Ibid, 1614.
[502] Adams, U. S., vi. 203.

to the 8th of June.[503] Only eight votes more in the House would have authorized a recess, but these could not be secured.[504] However, members who desired to go home to see their families did so. Among these was Giles who had voted against the resolution for adjournment. He seems to have been absent during the month of May, not, however, without observation. One, Thomas Ritchie, mighty in Virginia, more than usual, observant of everything and everybody, had never ceased to watch the senior senator from Virginia, a free-lance in Virginia politics. On the 22nd of May, in a series of letters published under the general title "Letters from the Simple to the Great," appeared in the *Enquirer* an article addressed to "The Honorable William B. Giles (now at home)."[505] General dissatisfaction was expressed by Mr. Ritchie with the career of Giles during the Madison administration and particular displeasure was shown at his retirement at this crisis in his country's history. Giles was back, however, in time to give his votes on the important subject to be acted on in June. Was it more than a coincidence that, during this period of absence, the Republican caucus met and nominated James Madison as the Republican candidate for President?[506]

The country, meanwhile, had been expressing itself on the subject of war. Memorials and petitions had been coming to Congress for several months; those from the north usually deprecating that probable event; those from the south approving the measures of government and calling for the final arbitrament of this tangled question of our foreign relations. Virginia, as early as January 25, had spoken. Reciting the sufferings of our injured country, the memorial declared that Great Britain had already made war upon us "of the most aggravated species," that "a further indulgence of hope is allied with disgrace, and forbearance becomes criminal." Resolving that, "the period has now arrived *when peace, as we now have it,* is disgraceful, and war is honorable," they pledged for the "support

[503] Annals, (April 25) 216.
[504] Ibid, (April 25) 1342.
[505] *Enquirer,* May 22, 1812.
[506] May 12.

of the character and dignity of the Government . . . our lives, our fortunes, and our sacred honor."[507] On June 12, Giles presented a long memorial from many citizens of Richmond and Manchester, "deprecating the calamities of war, but expressing their opinion that, if peace cannot be procured with honor, and war is inevitable, it ought to be declared, not against Great Britain only, but against Great Britain and France."[508] The opinion of the state had been expressed in the resolutions above cited, but the Richmond-Manchester resolutions would indicate that even Virginia was not a unit as to the course to be pursued. This impression is further confirmed by a petition from Jefferson County, in the northwestern part of the state, disapproving the measures of government tending to war, and praying the removal of commercial restrictions." In fact, the opposition of the interior counties of Virginia to the War of 1812 was excelled only by that of the New England Federalists."[509] In Congress, the Tidewater Quids and Valley Federalists lent valuable support to the New England opposition.

There was, however, no use to protest, nor could the President hope for peace; projects for a new mission would not be palatable to Clay and his friends, and their support was necessary for any successful measure, as well as for the election of a President in the winter of 1812. On June 1, the President sent to Congress a long message reciting all of our grievances and recommending to the immediate consideration by Congress the question of declaration of war.[510] In the House, the message was referred to the Committee on Foreign Relations and, in two days, Calhoun presented a masterly report reciting our grievances against Great Britain since 1804 and a bill declaring war. The bill passed on June 4, 79 to 49—four Virginians led by John Randolph voted nay.[511] In the Senate, the efforts of the opposition to the administration programme were of two kinds.

[507] Annals, Twelfth Congress, 1st Sess., 112.

[508] Ibid, 259. Another Richmond-Manchester petition was presented June 12, (p. 1482) praying for war against Great Britain.

[509] Ambler, Sectionalism in Virginia, 92-93.

[510] Richardson, Messages and Papers, 1, 499.

[511] Annals, 1637.

Federalists were opposed to war against either power and endeavored to postpone action on the subject.[512] In this effort they were not assisted by Giles. He was allied, however, with the Federalist party in their attempt to secure an amendment authorizing the issuance of letters of marque and reprisal against both England and France.[513] When this was defeated, Giles joined his Republican brethren in the vote for declaration of war.[514] The act, as finally approved, declared war, authorized the use of the whole land and naval force of the United States to carry it into effect, and gave the President power to issue letters of marque and reprisal to private armed ships, "against the vessels, goods, and effects of the United Kingdom of Great Britain and Ireland, and the subjects thereof."[515] Those, who, like Giles, saw no better reason for war against England than with France, may have been perfectly right from the point of view of theory,[516] but Jefferson, too, was right when he characterized their desire to punish both nations at the same time as a piece of sublimated impartiality. Whip one enemy at a time is a common sense programme for all nations as well as for individuals; and it would seem wise to fight first that one against whom it is easiest to secure support, against whom we could most easily make war, and from whom, in case of success, we could exact a precious indemnity.[517] The South and West had brought on the war; the South and West had chosen war against Great Britain; the South and West wanted Canada, the fur trade, a free hand with the Indians, as well as assertion of our national spirit. New England would have allowed our grievances against England to have gone unavenged. South of the Potomac and west of the Alleghenies, men rejoiced at the opportunity to reap "a new harvest of political and national glory."

[512] Annals, 284, 296.

[513] Ibid, 297.

[514] Ibid, 297.

[515] Act approved June 18, 1812.

[516] Madison himself had contemplated war with both powers but decided that such a course was impracticable. Hunt's Madison, 326.

[517] John Howe in 1808 heard everybody talking such language, Am. Hist. Review, 17: 342, 354.

Congress proceeded, after the declaration of war, to make financial provision for its efficiency. In this work, the much despised Senate showed a willingness to coöperate. On the 26th, it passed the act authorizing the issue of five million dollars in Treasury notes.[518] For this appropriation, Giles voted, though he gave his voice against the bill authorizing additional duties on imports,[519] probably because it failed to reimpose a duty on salt, in which he claimed to be much interested. Bills providing for defence were passed and Congress, having done its work, adjourned July 6th.

[518] Act approved July 1, 1812.
[519] Annals, 311.

CHAPTER XII

"PUTTING CLAWS ON GALLATIN"

During the recess of Congress, important military events took place. Rushing foward with the ardor of Crusaders to seize the long coveted prize, our ardent westerners had, under Hull, surrendered American territory. Defeat and failures had met our young army at almost every step. Van Rennselaer was defeated at Queenstown Heights, Smyth and Dearborn had made only feeble efforts to invade Canada from the east. Our little navy, on which small reliance had been placed by the administration, had won all the laurels of the campaign. The biographer of Giles cannot refrain from adding, so great has been the severity of criticism directed against his conduct in preceding years, that the five months of war experienced before Congress met in its second session, had justified his reliance on regular troops, his antipathy to a militia, and his new belief in the necessity of a capable navy.

The second session began November 2, six days before the second election of Madison to the Presidency. In his message, the President gave a brief recital of military events in as favorable a manner as possible; and recommended measures for the increased efficiency of the army—larger pay for privates, additional general officers, an enlargement of the navy.[520] The report of the Secretary of the Treasury recommended a loan of twenty million dollars. The adoption of measures in harmony with these recommendations was the programme outlined for Congress: Congress, more obediently than usual, proceeded to carry out the programme.

Our discussion of the proceedings of this session must be brief because the Senate debates are not reported. Giles's active participation in the discussion of the measures considered is plain from a reading of the Journal of daily proceedings. He was, however, without much ado, ousted from the Committee on Foreign Relations, and was given no prominent committee

[520] Richardson, Messages and Papers, 1, 514.

chairmanship,[521] though he was responsible for the initiation of many prominent acts. Very little but his votes on important measures can be given.

The first act to be passed was one for the increase of the pay of noncommissioned officers and privates. No material opposition developed against it in the Senate, and Giles voted with the majority.[522] No trouble, also, was found over the passage of the act to increase the navy of the United States. It provided that, as soon as possible, four ships of seventy-four guns and six of forty-four should be built.[523] Only two Senators, Messrs. Crawford of Georgia and Turner of North Carolina, were in opposition.[524] Giles rejoiced to be able to give it his sanction and to receive by its enactment a justification of a number of his previous votes and speeches. Before the end of the year, however, he had found opportunity to thwart the will of the Secretary of Treasury by securing the passage of the act directing the Secretary to remit fines, forfeitures, and penalties in the case of those of our citizens who, between June 23, the day when British orders were repealed, and September 15th, the day when news of the declaration of war was given out in England, had set sail with cargoes from English ports with the expectation that the repeal of English orders on June 23 would operate to repeal our non-intercourse with Great Britain.[525] The ships, on their arrival, had been seized and, according to law, half of the proceeds of sale should go to the collectors and half to the Government.[526] An entire confiscation seemed unjust as the captain appeared to have acted in good faith. On the other hand, by the sale of their cargoes, they had gained an artificial profit resulting from another act of the Government, the act declaring war; the duties collected were by no means proportionate to the advantage secured to the importers; and,

[521] Journals of the Senate, Twelfth Cong., 2nd Sess., 27.
[522] December 1. Act approved December 12, 1812.
[523] Act approved January 2, 1813.
[524] December 14, 1812.
[525] According to our act of March 2, 1811.
[526] See Act, March 21, 1809.

besides, the Government was in desperate straits for money.[527] Madison had, in his message, left the matter to Congress with the exhortation that they consult both "equitable considerations" and "public interest,"[528] and Gallatin was in favor of remitting the half of the forfeitures due to collectors and a part of the Government's share.[529] In the Senate, the matter had been referred to a select committee, of which Giles was chairman.[530] On the seventh of December, he reported a bill remitting all forfeitures and penalties and secured its passage on the fourteenth by a large majority. The House had already, by a close vote, refused to leave the matter to Gallatin[531] and, by a vote just as close, passed Giles's bill.[532] In the course of the debates in that body, the Treasury was severely handled, in attacks indeed "hardly less mischievous," according to Gallatin's biographer, though, of course, "more honest and less spiteful."[533]

The bill[534] providing for twenty more regiments of infantry to be enlisted for one year's service met with considerable opposition. Giles, true to his principles as announced during the last session in the debate on the volunteer bill, voted against it, after Smith, Leib, the Federalists, and he, himself, had failed in their efforts to increase the term of service to five years, three years or eighteen months.[535] He voted for the bill authorizing a loan of sixteen million dollars and did not join hands with the Federalists in their attempt to limit the rate of interest that might be paid.[536] He opposed a bill allowing the issuance of five million dollars in Treasury notes.[537]

A very interesting act for the regulation of seamen on board American ships was passed as an overture to England on

[527] Adams, U. S., vi, 440.
[528] Richardson, Messages and Papers, i, 519.
[529] Annals, Twelfth Congress, Second Session, 1258.
[530] Ibid, 18, 28.
[531] December 11.
[532] December 23.
[533] Adams, Gallatin, 472.
[534] Act approved January 29.
[535] January 21, January 23.
[536] February 4, 1813. Annals, Twelfth Cong., 2nd Sess., 96, 97.
[537] Act approved February 25, 1813.

the subject of impressment. Monroe had, on June 26, 1812, offered the British government a law prohibiting the employment of British seamen on American ships.[538] In his message at the beginning of the session, the President had made mention of the offer, and the House had finally passed a measure to carry out the President's desires.[539] When it came over to the Senate, it was handed to a committee with Giles at the head[540] and, on the eighteenth, he reported it with an amendment. It was finally passed on the twenty-seventh, the administration senators giving their support and the Federalists and Smith, Leib and German standing in determined opposition.[541] The act, as passed, provided that, after the termination of the present war, no persons, except citizens of the United States or persons of color native of our country, should be employed on any public or private ship. Citizenship by naturalization should be granted only persons who had been in continuous residence for five years, and such citizens, on seeking employment, were required to produce a certified copy of the act by which they were naturalized. No seamen of another nationality were to be allowed as passengers on board an American ship in a foreign port without written permission from the proper authorities of their own country. However, these provisions were not to apply to the employment of the seamen of any country which should not have prohibited the employment of native American citizens on the public or private ships of that country.[542] This act was, no doubt, in its operation, as Mr. Adams claims, unfavorable to the United States.[543] England was to surrender her claim to a right of employing American citizens and, in return, we agreed to abide by the same rule.

In the discussion of the Congress just described, the party of the Smiths did not apparently act together to harass the President. Whether it was the chastening finger of a public

[538] Am. State Papers, Foreign, iii, 585.
[539] February 12.
[540] Annals, 85.
[541] Ibid, 111.
[542] See Act approved March 3, 1813.
[543] Adams, U. S., vi, 454, et seq.

crisis which influenced their minds, or whether the advent of war had, as usual, increased the political fighting strength of the administration, in any case, the Senate was unusually harmonious, and, on most occasions, gave the required vote without the call for a division.

A difference, however, was seen when Congress came together again. The Thirteenth Congress met in extra session May 24, 1813. Federalists had made gains at the Congressional elections in New York and New England and now could muster sixty-eight votes. Some advantage had accrued to the administration party through the defeat of John Randolph of Roanoke by John W. Eppes, son-in-law of Thomas Jefferson.[544] However, in point of numbers, the Federalist representation from Virginia remained unchanged; Lewis, Sheffey, and Breckenridge were returned and three new Federalists were come to Washington with them.[545] In the Senate, Brent and Giles were still at hand, one supporting the administration, and the other frequently acting in coöperation with Federalists. Federalists in the upper House, although the same in number as in the previous session, had gained in influence through the election of Jeremiah Mason from New Hampshire and Rufus King of New York. Besides Giles, there were still present Smith, Leib, German and Gilman of the discontented Republicans; one more senator, now indeed, appeared to strengthen their hands, David Stone of North Carolina in place of Jesse Franklin. The necessities of war, however, would be strength to the administration in any efforts to carry out a legislative programme.

Since Congress had assembled last, Russia, the friend of the United States, and now an ally of England, had offered her services in mediation between the warring powers. Hastening to accept these kindly offices, the President had, on May 9, hurried James A. Bayard and Albert Gallatin aboard for Russia, in which country they were to coöperate with John Quincy Adams,

[544] Eppes had moved into Randolph's district before the 12th Congress and had been voted for in 1811 but was defeated. He had been, however, able to reduce Randolph's majority. Eppes was an ardent war man and Randolph one of the most ardent anti-war members.

[545] Ambler, Sectionalism in Virginia, 93.

our minister, for the purpose of negotiating treaties with England and a commercial agreement with Russia.[546] The Senate proceeded to take under consideration the nomination of these gentlemen as envoys extraordinary.[547] Rufus King, advancing at once to Federalist leadership, offered, on June 2, resolutions asking the President for the documents connected with the case, and desiring to know whether Albert Gallatin still "retains the office of Secretary of the Department of the Treasury;" if so, under what authority, and who discharged the duties of Secretary of the Treasury during his absence.[548] The President, in reply, answered that the office of Secretary of the Treasury was not vacated, that in Gallatin's absence the duties were discharged by William Jones, Secretary of the Navy, and that the proceeding was according to an act of Congress named.[549]

Up to this time, Giles had been absent. On this day, however, he took his seat and "put a claw on Gallatin."[550] Two days later, when Anderson of Tennessee, usually heretofore an administration man, moved to refer the nomination and the message to a select committee, Giles "opened his severe thunders upon poor Albert."[551] A committee, appointed in accordance with the motion above mentioned, and consisting of Anderson, King, Giles, Brown, and Bledsoe, reported that they had addressed a letter to the President on the subject and had later called on him and had received answer that the President did not recognize their official character under the resolution as adopted by the Senate. They, therefore, offered for consideration a resolution declaring that, in the opinion of the Senate, "the powers and duties of the Secretary of the Department of the Treasury, and of those of our Envoy Extraordinary to a foreign power, are so incompatible, that they ought not to be, and remain, united in the same person."[552]

[546] Richardson, I, 526.
[547] Annals, Thirteenth Cong., i, 83.
[548] Ibid, 84.
[549] Annals, June 7.
[550] Daniel Webster, June 7, 1813, Van Tyne, Letters of Daniel Webster, 38.
[551] Ibid, 39.
[552] Annals, Thirteenth Congress, 1st Sess., 86, June 14.

Twenty senators, composed of Federalists and anti-administration Republicans voted aye on all motions on the subject. The committee waited on the President informally on the sixteenth of July; presented the resolution adopted June sixteenth, and, receiving nothing but regrets that the Senate did not agree with him on the subject of Gallatin's nomination, withdrew.[553] On hearing the report from their committee, the Senate rejected the nomination of Gallatin by a majority of one vote and confirmed those of Adams and Bayard by large majorities.[554] On the same day on which the nominations of the three envoys extraordinary were sent to the Senate, that body received also the nomination of Jonathan Russell, of Rhode Island, to be Minister Plenipotentiary to Sweden. Again the opposition raised its voice and asked for the "correspondence which may have passed between the United States and the King of Sweden, respecting the interchange of public ministers between the said Governments."[555]

Answer was received from the Secretary of State that no direct correspondence had passed between the two governments but that letters had been received from other sources showing the wishes and intention of Sweden.[556] Again the matter was referred to a committee, composed of Wells, Giles, and King, with instructions to confer with the President.[557] On July 6, a message was received from the President declining the proposed conference on the ground that "the appointment of a committee of the Senate to confer immediately with the Executive himself, appears to lose sight of the coördinate relation between the Executive and the Senate, which the Constitution has established, and which ought therefore to be maintained." Most magnanimously the President added that he was "entirely persuaded of the purity of the intentions of the Senate."[558] Indisposition of Madison prevented an interview between him and the

[553] Anderson's Report, Annals, July 19.

[554] July 19. Senate Executive Journals, July 19, 1813. Giles voted against Gallatin and for Bayard and Adams.

[555] Annals, 92, June 2.

[556] Annals, 92.

[557] Ibid, 95.

[558] Richardson, Messages and Papers, I, 530.

committee; finally, after the committee had declined to interview the Secretary of State on the subject,[559] the Senate resolved, twenty-two to fourteen, "that it is inexpedient, at this time, to send a Minister Plenipotentiary to Sweden."[560]

The proceedings described in the preceding paragraphs were of course in secret session, and the debates, therefore, are not published. The prominence of Giles in the deliberations is seen in his presence on both of the committees appointed to confer with the President and by expressions, such as those of Webster's quoted above. The intensity of feeling in the controversy is apparent and the seriousness of the issue is easily comprehended. Webster, writing on June 11, says, "Giles has no mercy. It is most probable he will stick with King & Co. I should not be surprised, if they should drive Madison *to* and Gallatin *from* the Treasury."[561] Subtracting much from the expressions of an enthusiastic young Federalist not unable to see what he much would desire, we can gather how serious was the opposition to the administration in the Senate. Monroe was so excited about the situation that he wrote to Jefferson asserting that the factions had begun to make calculations and plans founded on the expected death of the President and Vice-president and that Giles was being considered, so he was told, to take the place of President of the Senate.[562]

Was the opposition purely factious? Were all the senators engaged in it doing so merely to cripple the administration in as serious a situation as that existing in 1813? A statement of the defence given by the insurgent Republicans is only fair. It is found in "An Address of the Honorable William B. Giles to the People of Virginia,"[563] published in 1813. This address he

[559] Annals, 97.

[560] Note Mr. Adams's confusion of Minister Plenipotentiary and Minister resident. Adams, U. S., vol. VII, 63; Sweden was going to send us a minister resident.

[561] Letters of Daniel Webster, Van Tyne, 40.

[562] Adams, Gallatin, 484.

[563] Besides the appointments of Russell and Gallatin two other subjects are discussed at length—"*The true and factitious meaning of the terms* 'SUPPORT THE ADMINISTRATION'" and "The Right of *Instructing Representatives, an Unalienable right.* To be *executed by Man in his native, and not in his Representative character.*" Under the first of these

wrote, not only to place himself in a correct attitude before the present generation, but to protect his reputation before the tribunal of posterity—for our Senator professes a "love of future fame." It was far from his intentions, he declared, "to criminate the administration, . . . still less, the President of the United States individually." Unrivalled opportunities for judging the motives of James Madison had assured him of "their unsullied purity." Differences of opinion between him and the President were due to "infirmities of our nature." Madison had been unfortunate in the unexampled difficulties of the circumstances incident to his period of office and also in the "intrusions of other self-created advisers."

On the subject of the mission of Russell, Giles rested his defence for his conduct on the fact that the President proposed to send to Sweden a Minister Plenipotentiary while Sweden intended sending us only an ordinary minister resident. Declaring that he had the greatest respect both for the President and Mr. Russell, he asserted that, if the President had nominated Mr. Russell for an appointment of the same grade as that of the Swedish Minister, there would not have been "one solitary objection to the measure, nor the person nominated."[564] If the object of the discrimination was to secure Swedish mediation with England, it could only do harm; and, if its object was to accommodate Mr. Russell, it would be sacrificing public to private interests.[565]

When he came to the nomination of Gallatin, Giles had some interesting points to make. If precedent were urged in favor of the appointment to a foreign mission of an important officer

heads Giles defends his attitude on war measures. The bill providing for twenty-five thousand men—opposition to the volunteer bill—the provision for building 25 frigates, etc. To his position now the country had come—he had voted for the many bills for carrying on the war.—He had, in supporting measures, proved to be wise, supported the administration better than some who got more credit for doing so than he did.

[564] This seems hardly reasonable in view of the investigation into Mr. Russell's conduct while Chargé at Paris, entered into after Russell's nomination was made. Annals, Thirteenth Cong., i, 91-94.

[565] Giles also defends the right of the Senate to appoint a committee to confer with the President, which right Madison denied.

in our government, who was allowed to retain that office in his absence, he asked: Shall Republicans follow Federalist precedent which Republicans formerly condemned? No one more than Madison, Gallatin, and Giles had opposed the appointment of John Jay in 1794—and now that appointment was referred to by the administration as a precedent making valid another similar appointment. Very suggestive and very familiar language is that which follows: was there no other Republican who might have performed the foreign service? Why select Mr. Gallatin, a foreigner, when native-born citizens of equal ability for this service might have been found? Did Giles himself wish the office? is a not unnatural query.

Why, it is asked, did the President act so hastily? The appointments were made just a few weeks before the meeting of the Senate. "The necessity which impelled this movement, was not very urgent at the time, and . . . a becoming patience of two or three weeks, would have ennabled the President to consult the Senate upon the measure in the usual constitutional way, without making so many novel and hazardous experiments upon fundamental principles, as necessarily accompanied the proceedings, which did take place. The first of these consists in the attempt to unite in one person, two incompatible offices; the second, to substitute another person to perform the duties of Secretary of the Treasury during his voluntary absence from the United States for an indefinite period."

This, then, was the defence. That it had some force no one can deny. The objections raised to the appointments seem to be valid objections, with the exception of that which rested on Gallatin's foreign birth, in which objection of course, there was no reason. As for the charge of inconsistency, Madison, Giles, Federalists, and all the principal actors on the political stage at the time were in the same category. Federalists were talking and acting like the original Republicans, Republicans used language that had fallen from the lips of old time Federalists. No man, indeed, in American political life ever held more contradictory opinions than did William B. Giles; no man, to his credit be it said, ever made more frequent admissions of former

errors. But, admitting that, technically, the opposition could, on the subjects of the nominations of Gallatin and Russell, offer a fair defence, had there been no real antipathy produced by other causes, the votes on these questions would no doubt have been different. Part of this antipathy was due to a genuine conviction that the measures of the administration were weak and faulty and part, so far as Republicans were concerned, was due to the jealousies incident to political life.

For the various tax bills proposed by the administration Giles voted. Two important acts met with Giles's opposition. One was the act making trading under British licenses a misdemeanor punishable with forfeiture and fine.[566] The aim of the bill was to abolish trade between New England and British ports through permits issued by the English government. In the Senate, Giles proposed an amendment striking out the forfeiture provision and, on the rejection of the amendment, voted with the Federalists against the bill.[567] The other was an embargo desired by the President to prevent an illegitimate trade, by which England was enabled to secure from our country "exports essential to their wants, whilst its general commerce remains unobstructed."[568] The Senate killed the measure at this session, though it was the first act to be passed in the December session of Congress.[569]

[566] Act of Aug. 2, 1813.
[567] Annals, 53, 55.
[568] Act of July 28, 1813.
[569] Act approved Dec. 17, 1813.

CHAPTER XIII

CLOSING THE WAR: RETIREMENT OF SENATOR GILES

While the members of Congress were resting at their homes, there had been no rest for anyone else. The army and the administration had been busy, but there was little to show for their worry and manœuvers. In general, the summer and fall of 1813 had been marked by failures, redeemed by two very fortunate occurrences. The campaign in the east had resulted as usual with no credit to our forces; in the west, the month in which Congress had adjourned had witnessed an Indian massacre. The British, too, had been able to blockade the Chesapeake and Delaware Bays and to bring increased suffering to the homes of the loyal southern supporters of the war. But these southerners and their western friends had wrested sufficient victory from defeat to give a cheerful note to the President's message on December 7. The victories of Perry on Lake Erie September 10, and Harrison's achievement on the Thames October 5, together with minor engagements, enabled Madison to conclude that "the war, with all its vicissitudes, is illustrating the capacity and destiny of the United States to be a great, a flourishing, and a powerful nation."[570] A special message of December 9 made a request again for an embargo to prevent supplies from our ports from finding their way to the British armies and fleets. New England, as she had once angrily demanded war, had as angrily resisted its declaration and now sulkily refused to coöperate in conducting it to success. Her representatives in Congress uniformly voted against all war measures; her governors refused to allow the use of the state militia by the Federal government; her money took its flight across the Canadian line instead of finding its way into the Treasury of the United States; she stubbornly withheld praise even for naval victory; she talked secession and prepared for it; she furnished English forces with supplies with which to sustain themselves while defeating American armies.

[570] Richardson, Messages and Papers, I, 534.

But would not an embargo but add to the flame of New England rebellion without accomplishing any real advantage to the Government? However, it was passed; Giles, having received a light on the subject since his vote at the end of the last session, voted with the majority.[571] The storm that might have been expected darkened the horizon in New England. Other unexpected circumstances also soon arose. Although Gallatin and his colleagues had found that their trip abroad, so far as it related to the Russian offer of mediation, was a wild goose chase, yet it was soon known that their services would be needed for the negotiation directly with British envoys, and that Napoleon had apparently been crushed. If peace did not soon come, England could now use all her forces against unfortunate America, and a further alienation of the northeastern states seemed exceedingly unwise. The President, holding out and clinging to the precious embargo as long as possible, finally yielded on March 31, and recommended a repeal of the obnoxious law on the ground of the defeat of the French and the inevitable downfall of the continental system.[572] No time was lost by a willing Congress. The House, on the seventh of April, by an overwhelming vote, passed the bill for repeal.[573] In the Senate, without delay and with no appreciable opposition, the bill for repeal also passed.[574]

Such military measures as were demanded received the approval of Congress—measures in line with previous contentions made by Giles.[575] In the passage of them there was a surprising unanimity in the Senate. Giles was, at this session, so far as the public records show, particularly loyal. When a memorial of the House of Delegates of Maryland was presented, setting forth the calamities of war and praying for peace,[576] Giles was one of the leaders in resisting the motion to print.

[571] Annals, Thirteenth Cong., 2nd Sess., 561.

[572] Richardson, Messages and Papers, 1, 542.

[573] Annals, 2002, April 7.

[574] Ibid, 741, April 12.

[575] Giles, however, was not Chairman of the Committee on Military Affairs. He was on the Committee on Militia. He played apparently only a small part in this session.

[576] Annals, Thirteenth Cong., 2nd Sess., 616.

No practical result, he declared, would come from the memorial. Once more, as in the days of Jefferson, when Giles was an administration leader, he was now found pleading for harmony and deprecating the evils "likely to grow out of the heat and animosity of party feeling."[577] The days of the Smith faction were evidently numbered, when the intellectual leader of the group was preaching brotherly love. So far as Congress was concerned, the administration was continuously gaining more solid ground and nearing the day when the only opposition it had to contend with was that proceeding from the opposite party. The breach among the Republicans, which John Randolph had first opened in 1804, which Samuel Smith and William B. Giles had been widening since 1809, was fast closing. Before many months, even the Federalists were to be humiliated through their own excesses and the fortunate issue of peace, and Madison was to stand at last supreme.

Congress had decided to meet again on the last Monday in October but great and weighty matters[578] made it necessary to call them together on September 19. We had, indeed, won victories; Brown and Scott had successfully fought at Chippewa and Lundy's Lane, though nothing had been gained. With these exceptions, nothing had occurred which could give encouragement. The British continued the blockade of our coast, working distress to the chief supporters of the war—New England talked even more loudly of defiance and was now planning for a convention whose outcome none could tell. And, most insistent problem of all, the financial situation was distressing to our statesmen. When the proclamation for the early meeting of Congress was issued, the most humiliating event of the war had not taken place. For, on August 24, the capital city itself had been taken and the meeting place of the national legislature had been destroyed. One happy occurrence served to brighten men's spirits just before the opening of the session—the victory of Macdonough at Plattsburg on September 11. The President called upon Congress to put

[577] The substance of Giles's Speech (except the first of his remarks) is found in the answer of Goldsborough, Annals, 618, 621.

[578] Madison's Proclamation of August 8th.

forth the greatest efforts to provide for the pecuniary supplies and military forces.

On the fifth of November, Giles, for the Committee on Military Affairs,[579] reported two bills. The first authorized the enlistment of recruits between the ages of 18 and 50 years, allowed each future recruit three hundred and twenty acres of land, in lieu of the existing allowance of one hundred and sixty, and declared exempted from service in the militia any person subject to militia duty who should furnish a recruit. The second authorized the President to call upon the states and territories for quotas for two years' service to maintain the defence of the frontiers of the United States.[580] These bills were drafted after conference with Monroe, now Secretary of War,[581] and were offered, not in exact compliance with his recommendations, but as the strongest measures possible of enactment. The first, after debate, passed the Senate November 12 without a division. No trouble was found by the able opponents of the measure in detecting defects in the second bill or in finding objections against it both practical and theoretical. It was unjust, oppressive, unconstitutional, without precedent, incapable of execution. It was regarded as the first step in the direction of conscription, and resistance to it, if passed, was threatened by Federalist Senators.[582] Giles's speech in its defence is not at hand. From the other participants in the discussion, we learn that he upheld its constitutionality and its popularity. He appealed for support for the administration in the present crisis, an administration, which, "if weak and violent," was, at least, "honest and patriotic."[583] Some doubt was cynically expressed as to his credentials to act as a friend of the administration but, with an elasticity not

[579] Which he now headed. Foreign Relations and Military Affairs seem to have been separated in the 13th Congress. Giles seems to have had a tussle to get the chairmanship of the Committee on Military Affairs instead of the chairmanship of the Committee on Militia.

[580] Annals, 38.

[581] See Monroe Correspondence, Oct. 1814. Annals, 13th Cong., 3rd vol., Appendix, 1502 et seq.

[582] See Speech of Gore, Nov. 22, Annals, 13th Cong., 3rd vol., 100.

[583] Annals, 72, 75, 77, 78, 84.

peculiar to himself, he had returned for the time being to the support of Madison and the Secretary of War. The Senate seemed to be under good control and passed the militia bill 19 to 12, with the opposition only of Federalists and two Republicans.[584] In the House the Militia bill was attacked with the greatest energy. Some opposed it because it authorized a draft, some because it did not. Troup, the Chairman of the House Committee on Military Affairs, fought it because he considered it "inadequate to the object. It proposed to give you a militia force, when you wanted not a militia but a regular force." No one was more heartily in accord with this principle than was Giles. As strong provision for a regular army as had any chance of carrying, he had already furnished. Troup declared the government had "absolute power over the population of this country for this purpose, and that in the present state of the country it is wiser to resort to classification and draft than, to resort to the bill from the Senate."[585] Giles would have followed Troup or anyone else to the utmost limits on that proposition, but, unfortunately, others besides the Georgian and the Virginian had to be consulted. For instance, Cyrus King of Massachusetts declared that the conscription bill of the House was "still more destructive of our militia . . . completely annihilating the State sovereignties."[586] Sheffey of Virginia characterized the measures proposed by the administration as "arbitrary and despotic."[587] The bill, however, after mutilation by the House, and refusal of that body to accept the report of the conference committee, was, in disgust, indefinitely postponed by the Senate.[588] Besides the act authorizing the employment of minors and increasing the bounty, the only other provision for the army was an act, inspired by the indisposition of the states to raise volunteer forces, authorizing the President to receive such corps, up to forty thousand men, to be employed only in the states

[584] Nov. 22, Anderson and Varnum.
[585] Speech, Dec. 2.
[586] Speech, Dec. 3.
[587] Annals, 854.
[588] December 28.

raising the same or in adjoining states, except with the consent of the respective state executives.[589] The Military Committee, during the whole session, however, was an exceedingly busy committee; under the leadership of Giles, it acted in consistent harmony with the desires of the President. No member of the Senate during the session was more active or had a larger hand in shaping legislation.

Only less fortunate than the inefficiency of measures for defence was the financial legislation. Here was the greatest need; with money, the government would not suffer. The country was not, indeed, impoverished but the problem of tapping the inexhaustible resources of a well-to-do people was the problem taxing statesmanship. Loans had not done it; treasury notes of the kind heretofore authorized had not been successful. Secretary Campbell, after betraying the straightened circumstances of the government,[590] had, ill and discouraged, thrown up the fight and resigned. Andrew J. Dallas had then been called upon to steer the sinking financial craft. The new Secretary thought the Treasury suffering from every kind of embarrassment,[591] had little respect for the proposed solution of the difficulty by the issuance of more treasury notes, and thought the only solution was the reëstablishment of a "national institution operating upon credit combined with capital and regulated by prudence and good faith."[592] A bill was thereupon brought forward in the House providing for the establishment of a bank with a capital stock of fifty million dollars.[593] At the instance of Calhoun, the measure was totally changed by the committee of the whole so as to take away from the government any privilege of holding stock and all control of the bank operations.[594] Between the two plans, the House was unable to accomplish anything. The Senate now took up the

[589] Act of January 27, 1815.

[590] See Report, Sept. 23, 1814.

[591] American State Papers, Finance, ii, 872.

[592] Ibid, 866.

[593] Introduced in House, Nov. 7—debated Nov. 14 and after.

[594] Annals, Nov. 16 and 17.

question[595] and voted in favor of the bank.[596] The House, after once voting it down, finally, on reconsideration, voted for it. A vain fight was made in the Senate to retain the provisions of their bill providing for a capital of $35,000,000, and authorizing the suspension of specie payment. Giles, both because of the necessity of concession and on principle,[597] spoke and voted against insistence on the Senate measure, and the bill after a sharp contest was passed,[598] only to be vetoed by the President on the ground that, as constituted by the proposed law, the bank would not serve the needs of the government.[599] A vain attempt, supported by Giles, was made by the Federalists to pass the bill over the veto and failed; whereupon, another bill presented by Giles's colleague and friend, James Barbour, more in accordance with the President's desires, passed the Senate against the opposition of Giles, only to be killed in the House.[600] All hope for a National Bank at this session was destroyed. In financial legislation, Congress confined itself to provisions for further taxes[601] and further loans.[602]

Giles was exceedingly active during the whole session. As Chairman of the Military Committee, despite the failure of one of his principal measures, the militia bill, he was constantly engaged and participated in the enactment of a number of important laws. Besides the more important questions necessary to be considered, the committee were compelled to act on many minor matters, such as relief for sufferers and indemnification for losses arising from the progress of war. Giles's recommendations were in line with the desires of the administration and the charge of factiousness, so far as it refers during this session to the conduct of business imme-

[595] Bill reported Dec. 2.

[596] Dec. 9. Giles did not vote.

[597] So says Annals, 174, but he had voted, 167, to raise the capital from $30,000,000 to $35,000,000.

[598] Jan. 20.

[599] Jan. 30, Richardson, Messages and Papers, i, 556.

[600] Annals, 231, 1168.

[601] Acts, Dec. 15, 1814; Dec. 21, 23; Jan. 9, 1815; Jan. 18, Feb. 27, Mar. 3.

[602] Acts approved Nov. 15, 1814, authorized loan of $3,000,000; Dec. 26; Feb. 24.

diately under his charge, falls to the ground. As a matter of fact, the only important administration measure which he fought was the Bank measure and this he had fought on every occasion since his first entrance into Congress.

Two pleasant duties fell to his lot before Congress adjourned. One was the proposal of resolutions complimentary to General Jackson and his men "for their uniform gallantry and good conduct" and directing the President to cause to be struck and presented to the General a gold medal "emblematical of this splendid achievement."[603] The other was the drafting of a report "respecting the relative powers of the General and State Governments over the militia." For fear that the pretensions of Massachusetts, Connecticut, and Rhode Island,[604] if acquiesced in, might be resumed in the event of a future war, the committee felt themselves "impelled by a sense of justice to express a decided approbation of its (the administration's) conduct, in supporting and preserving the Constitution of the United States against the effects of the State authorities aforesaid, which, after full consideration, the committee believe not warranted by the Constitution, nor deducible from any fair and just interpretation of its principles and objects."[605]

The report described was purely for the assertion of abstract principle. For, contrary to Giles's mournful prophesies of ill that would befall the government, the end of the war had already come, and, with it, the end of contests between President and Governors on the subject of the militia. On February 21, the Treaty of Peace was laid before the Senate and, without delay, confirmed. It now remained for Congress to assist in the establishment of conditions of peace in place of war. Among other things, Congress put an end to the system of commercial restrictions by the repeal of the "offending remnants of our discrimination and non-intercourse sys-

[603] Feb. 13.

[604] In claiming that the President had no power to make requisitions of a State's militia unless the Governor approved the call; and that such militias when called out could not be commanded by officers of the regular army.

[605] Appendix, 13th Congress, 1743-1744.

tem."[606] The act appropriately reported to the Senate by that Senator who had been closely associated with the whole plan of restrictive legislation on commerce, repealed all acts shutting our ports to foreign ships, including the embargo act of July 1812, and the licensing act of August, 1813. Thenceforth the British Orders, French Decrees, and American Embargoes, and non-intercourse were no longer to interfere with the natural progress of American trade.[607] In this way, ended a policy, commenced in 1807, persisted in "as a kind of political faith," "to be believed, not examined," for eight years.

With the end of the war, we were to enter on a new era, and, in our freedom from entangling relations with the two great European belligerents, we were to have opportunity for larger concentration on domestic policies. But, in the contests on great policies on the national arena, Giles was to have no part. He was, however, on a smaller field, to wield his sword—without wielding a sword he could not live.

The session ending March 3, 1815, was Giles's last session in the Congress of the United States. He had seen many years of participation in national affairs, and, during every year of it, when not ill, he had played a vigorous part—most of the time in building up and maintaining a Republican party. In the last few years, dissatisfied with the measures of the administration and unfriendly to a distinguished Secretary of the Treasury—possibly jealous of him—he had acquired a reputation for factiousness and party disloyalty and had been punished severely by the lash of public denunciation. The last year of his Senatorial career had been marked, outwardly at least, by a return to a more complete sympathy with the leaders of the party and had afforded an opportunity, if not for a glorious, at least for a graceful retirement.

Writing, as early as November 20, 1814, to his friend and future colleague, Governor Barbour, he expressed a definite intention to resign at the expiration of the session. The letter is well worth reading and will be given entire:

[606] Schouler, U. S., II, 491.

[607] Schouler, U. S., II, 491.

"Washington
December 20. 1814.

"Dear Sir,

I duly received your two friendly favors of the 14th and 16th instant; and felt truely grateful for the kind interests you have taken in my behalf in repelling the unmerited attacks of deluded and infuriated partisans. Protected by conscious rectitude, they will pass by me, as the idle wind; which I regard not. I sincerely congratulate you, upon your election to the Senate of the U. S.; and in triumphing over the opposition dictated by a similar spirit. It would afford me real pleasure to be associated with you in the discharge of Senatorial duties; but I think it probable, that will not be the case; as I propose to resign after the fourth of March; if left to myself; but I may be impelled to serve out the present term by outrage, violence, and injustice. Indeed I very much regret, that I have not heretofore been favored with your counsel and assistance; because I verily believe, in that case, a great portion of the evils which have befallen our country, might have been averted. I expect to leave this place for Richmond in two or three days, and shall therefore leave for a personal interview, a comparison of opinions upon several topics now in a course of consideration here; having the most important tendencies, of any I have ever witnessed since my entrance into publick life:—

Believe me, as usual, sincerely your friend

His excellency Wm B. Giles"

James Barbour

In accordance with the intention expressed in the letter just quoted, on November 23, he addressed to the Governor of Virginia a communication in which he declared that, on account of his long desire to return to private life and the necessity of attending to private concerns, he would take advantage of the happy condition of the country to resign the senatorial office.[608] The judgment of many on this retirement was expressed in an editorial by Thomas Ritchie, afterwards his earnest coadjutor in Virginia politics, two days after the resignation: "In parting

[608] Virginia Calendar of State Papers, x, 425.

with a man who has lived so long in public and filled so large a space in the eyes of the country, we bid adieu to one of the first geniuses of this State. Mr. Giles has erred;—private feeling has too much mingled with public duty—but in point of talents, he leaves few equals behind him."[609] Whatever our opinion as to his conduct during the administration of Madison, we may almost accept an opinion alleged to have been given by John Randolph, "There never was so great a void occasioned in any assembly as that caused by the retirement of William B. Giles from the United States Senate."[610]

[609] *Enquirer,* November 25, 1815.
[610] Ibid, December 16, 1830.

CHAPTER XIV

STATE RIGHTS IN VIRGINIA AFTER THE WAR OF 1812*

It has been said many times with truth that the War of 1812 promoted nationalism. "The Country," says a student of the period, "entered the war distracted, indifferent, and particularistic; it emerged from it united, enthusiastic, national."[611] Although the Federalists were destroyed by their opposition to the war, the Hartford Convention, the Peace of Ghent, and the Battle of New Orleans, yet they bequeathed their doctrine to the triumphant party. Certain it is that Federalist particularism during the war was bitterly condemned by Republicans, and certain it is that the dominant party proceeded to do all the things which they had condemned when the Federalists were in power. It is equally true, however, that, from the very end of the War of 1812, there was continuously a strong section of the Republican party that retained the old strict constitutional beliefs and that let no opportunity pass of strongly asserting their ideas.

The year after the war ended, there was delivered the answer of the Supreme Court of Appeals of Virginia to the Supreme Court of the United States in the case of Martin vs. Hunter's Lessee, declining to obey a mandamus of the Supreme Court of the United States and declaring the decision of a state court could not be reversed by the United States Court. Four years later appeared Chief Justice Roane's attack on the decision of Marshall in the case of McCullough vs. Maryland, and again, in 1821, Roane's assault in his Algernon Sidney papers on the decision in Cohens vs. Virginia.[612] The case of Roane stands out in conspicuous lines because of his position and of the dramatic features of an attack by a great judge on the

[611] Nicholas Murray Butler in J. H. U. Studies, Fifth Series, vii.

[612] For a description of this contest, see W. E. Dodd—"Chief Justice Marshall and Virginia," Am. Hist. Review, July, 1907.

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* Some of this chapter was published in the South Atlantic *Quarterly* for July 1911.

revered Marshall, both distinguished sons of the same state. Roane, however, was only the evident head of a party, prompted by Jefferson, voicing itself through the Richmond *Enquirer* and the legislature. It is true, to be sure, that there was in Virginia an opposition, sectional in most part—western—interested, for good reasons of their own, in nationalistic policies, and, at times, able to make their ideas felt in legislative enactments. But the old Republicans generally dominated. To the great Strict Construction Party of Virginia, besides a great judge, Roane, an ex-president, Jefferson, a great editor, Ritchie, cousin of Roane, there belonged a great publicist, John Taylor of Caroline, conductor at his home, Port Royal, of a hostelry for all good Republicans, and a great orator, John Randolph, and a future President, John Tyler, besides a host of more unfamiliar names.

The theories of the leaders were reflected in the attitude of the state legislature. Just before and just after the war, the General Assembly, it is true, had shown a nationalistic tendency. In 1810, they had replied to the proposition of the legislature of Pennsylvania in the Olmstead case to amend the Constitution by the establishment of "an impartial tribunal to determine disputes between the general and state governments," that, in their opinion," a tribunal is already provided by the Constitution of the United States, to wit, the Supreme Court, more eminently qualified from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid in an enlightened and impartial manner, than any other tribunal which could be erected."[613] The following year, on the other hand, they declare the National Bank unconstitutional, and instruct Senators Giles and Brent "to use their best efforts in opposing by every means in their power the renewal of the charter of the bank of the United States."[614] However, by "the united vote of the West against the East," in the session of 1814-1815, a report of a commission, dominated by John Marshall and recommending Federal

[613] Ames, State Documents on Federal Relations, 425.

[614] Ibid, 10.

appropriations for internal improvements in Virginia, was adopted.[615]

But, by 1817, the strict constructionists had regained the saddle. Resolutions in 1819 again opposed the bank, and, in 1820, the legislature declared, "that the Congress of the United States have no right to impose upon the people of Missouri, as a condition of their admission into the Union, the restriction which has been proposed in Congress, or any other restriction not necessary to guarantee a republican form of government." Following Cohens vs. Virginia in 1822, regardless of their opinion in 1810, they resolved that the Supreme Court of the United States does not possess appellate jurisdiction in any case decided by a State Court."[616] On the tendencies of the times, there is no more suggestive commentary than the writings of Jefferson. In 1816, in a letter to Gallatin, he had rejoiced in a "spontaneous and universal concurrence of sentiment." In 1820, however, he is full of grief because of the financial depression, "the steady tenor of the courts of the United States to break down the constitutional barriers between the coördinate powers of the states and the Union," and the threatening aspect of the Missouri question. Federalism, though killed as a party, had arisen in a more dangerous form in the Republican ranks and the judges were at its head.[617] A struggle was necessary to save the country from complete dominance by the heirs of Alexander Hamilton. John Taylor and Judge Roane, the Virginia apostles of the old ideas, were about to pass off the stage, the one in 1824, and the other two years before. On whom should their mantles fall?

In 1824, an answer came. On April 9 of that year, there appeared in the *Enquirer*, a bitter attack on the latitudinarian policies of Monroe and Clay. This was the beginning of a series of articles, long, frequent, ingenious, and from the same pen which iterated and reiterated the doctrines of 1798-1799.[618]

[615] Ambler, Sectionalism in Virginia, 98.

[616] Ames, State Documents on Federal Relations, 104.

[617] Writings of Gallatin (Adams), i, 105; ii, 176, 258, 273.

[618] Most of Mr. Giles's writings of this period are collected in a volume entitled *Political Miscellanies*. Unless other reference is given the articles quoted are in this book.

The author of the article in question was that same ancient enemy of Alexander Hamilton, in whom Jefferson and Madison had found so ready and vigorous an ally in the attacks on the Federalists régime and in their attempts to bring to success a system of their own, William B. Giles. The same statesman it was who had engineered the famous investigation of the Treasury Department in 1793; who had declared he saw no evidence of wisdom in the administration of Washington, and that the earlier that famous gentleman retired the better; who had helped in the agitation in Virginia in 1798, and later lent capable assistance in promoting the Revolution of 1800. Jefferson's right hand man to 1808, he had supported with all his fiery intensity the embargo acts, had devoted his talents to Madison's cause in 1808 but had, in 1810, turned his back on the administration and helped the Federalists to weaken its hands. Once popular in Virginia, he had, as we have seen, destroyed that popularity by denying, in a speech in the Senate, the mandatory character of legislative instructions to United States senators.[619] While sick and under the ban, he had voluntarily withdrawn from the public arena in 1815 to his farm in Amelia County. Joyfully greeted by admiring children and neighbors, and affectionately attended by four score slaves, he had entered upon nine years devoted to the pursuit of financial improvement and physical recuperation. His spacious plantation of three thousand acres, with its comfortable mansion furnished in solid mahogany, adorned with costly silver plate, and equipped with its bountiful supply of stock, shops, mills, dairies, and barns, afforded the conveniences and distractions suited for the relief of a wearied body and mind. Little time had he for public affairs. He did, however, faithfully read the best paper in all the world, Thomas Ritchie's *Enquirer*. And, in retirement, he had watched, though unable to join, the great movements of the time. A few days' service in the Legislature in 1816, a series of articles in 1817[620] and 1818,[621] published in the *Enquirer*, was all he had been able to do. By 1824, how-

[619] And by his general opposition to Madison.

[620] Against a system of universal education.

[621] Against a state convention.

ever, his health had evidently recovered, and the old lust for a part in the political war overpowered him. By nature and training devoted to State Rights, he found in the discussion of the time a favorable opportunity. The pens of Taylor and Roane were laid down; these he essayed to pick up and wield, hoping thereby to humiliate the Federalists in the Republican ranks. And what harm would come if his writings should open again to him the doors of political preferment?

He had seen with amazement and disgust men who called themselves Republicans follow such wild vagaries as protective tariff, internal improvements by the Federal Government, a National Bank. To be sure, he himself had once been guilty of forwarding the cause of internal improvements, and, in his eagerness to support the embargo acts, had stretched the powers of the Federal government in real Hamiltonian style. But these acts were done under the ægis of the great original Democrat himself, and some of them in times of great necessity. In old age, the fervor of youth in defence of the sacredness of constitutional limitations on Federal power returned to him, and the enemies of those limitations he now assaulted with more than the fury with which he had assailed the arch monarchist, Alexander Hamilton himself.

In the article of April 19, 1824, he denounced Monroe, a favorite enemy of past years, for abandoning State Rights. Under the influence of the electioneering spirit, the President and Clay are led, according to Giles, to ride any popular hobby in a very different way from George Washington, whom Giles, despite his earlier criticisms, had now learned to admire. The protective tariff is a species of robbery of one section by another. Messrs. Monroe and Clay, on internal improvements and Greek and South American affairs, also receive severe castigation. However, the article just described is merely introductory to a series, which, under the characteristic title, "Political Schemers—Hard Times," ran through April and May. The funding system of Great Britain and our banking system are highly distinguished members of that class of political schemes which were producing hard times. "Of all the per-

nicious monopolies that ever have been invented, banks," he declares, "must be considered as the most pernicious." A bank is a monopoly of currency and "a practical usurpation of his (the individual's) natural right to property."

In regard to the tariff, he asserts, "no legitimate government, still less the government of the United States, being a government of chartered, limited powers, has any right whatever to intermeddle with the surplus proceeds of man's labor, *after paying the public contributions;* and every encroachment upon this sacred guarantee to the individual by government, is a palpable and unjustifiable usurpation." The tariff makes us less, instead of more, independent; it will injure our commerce and our shipping. Besides, what is the effect of our tariff law upon our farmers, the growers of cotton, tobacco, flour and rice? They "are now suffering and most justly complaining of 'hard times' produced, amongst other causes, by the present exhorbitant tariff. A great number of worthy, wealthy, and middling farmers and planters have already been stripped of a great portion of their property, in a great degree by various governmental schemes. Many have been reduced to poverty, and many driven, most reluctantly, from their native states, and beloved friends and firesides, to take their chance in the wilderness for better times." Those who have not migrated have remained, hoping,—"if the natural order of things could be permitted in any degree to be restored,—they might be enabled so far to reinstate their affairs as to save their families from utter ruin and despair; but upon the first blush of this hope, this destructive tariff bill is presented to their view; and in an instant it has blasted all their fond anticipations. Apprehension and despondency are again visible upon the countenances of almost all intelligent reflecting men."

The pathetic picture with which the preceding paragraph concludes is not the mere wail of pessimism or of sectional prejudice. Evidence revealing the impoverished condition of the South during the decade 1820-1830 is abundant.[622] Giles himself, from this time until his pen becomes still in 1830, tells

[622] There had been an economic revival just after the war.

again and again the story of Virginia's impoverishment. His writing, his speeches, his messages as Governor, reflect this feeling of utter discouragement existing in the South of the Tidewater during the twenties. Well known are the cases of Jefferson, who, in debt, had to secure the privilege of using the lottery and was compelled to accept the generosity of his friends; of Madison, who could not offer acceptable security to the United States Bank; of Monroe, who had to sell his home.[623] Pathetic are the letters of John Randolph of Roanoke to Josiah Quincy as early as 1814 after a visit to the seat of his ancestors at the confluence of the James and the Appomatax. "Nothing," he wailed, "can be more melancholy than the aspect of the whole country in tidewater—dismantled country seats, ruinous churches, fields forsaken and grown up with mournful evergreens,—cedar and pine." The old families had dispersed from "St. Mary's to St. Louis; such as remained here sunk into obscurity. . . . Deer and wild turkeys are nowhere so plentiful in Kentucky as near Williamsburg."[624]

Those who could went west, as Giles declared. Jefferson, as early as 1818, informed Gallatin that "emigration to the West and South is going on beyond anything imaginable."[625] Many of those who remained at home became unspeakably discouraged, as did Giles, and took vengeance in vituperation against the politicians whom they considered responsible; others, as we shall see, tried to find a way out by scientific farming, the raising of cotton, and the sale of slaves.[626] Too many probably failed to examine their own mismanagement and local institutions,[627] and spent profitless energy in denouncing bank and tariff: but those historians not committed to a defence of the Hamiltonian ideas nor to a necessity of finding in slavery

[623] See Turner in Am. Hist. Review, xi, 559—"The South, 1820-1830." Ambler, Sectionalism in Virginia, 112. For further evidence, see Debates of Convention, 1829-30. Also Virginia Slavery Debate of 1832, passim.

[624] Life of Josiah Quincy by Edmund Quincy, 351, 354.

[625] Writings of Jefferson (Ford), x, 115.

[626] The evidence on the point is overwhelming. See below, p. 227. And Virginia Slavery Debate, 1832, passim; Ambler, Sectionalism, 112.

[627] Some, however, saw the economic evil in slavery, e. g. John Randolph. Life of Quincy, 351.

the cause of all southern ills, may see in the burden of a protective tariff a just cause of great and widespread discontent at the South.

Despite the fact that denunciation of the tariff was profitless, the contentions of the South were sound and their complaints justified. When they declared that the tariff imposed an unequal burden on the South, that it was robbing one section for the benefit of another, they were telling the literal truth. They found themselves compelled to pay higher prices for the hemp, flax, wool, and iron used in great quantities on southern plantations, while they knew that they were adding more than their share to the wealth of the nation. In 1829, they contributed three-fourths of the agricultural products exported from the country and three-fifths of all commodities that were sent abroad.[628] When they were told of the immense benefit that would accrue to the manufacturers and farmers alike through the creation of home markets, they answered: "The manufacturers by having the monopoly of furnishing us with their commodities, would in consequence obtain the monopoly of being the only purchasers of ours."[629]

Yet the farmers of Virginia did not leave to governors and legislatures the exclusive privilege of endeavoring to secure their redress. One of the most interesting studies now remaining to be made in Virginia History is an investigation of the activities of rural citizens between 1820 and 1830 to promote their own interests. A glowing chapter could be written on the agricultural societies of Virginia, following the war of 1812. Societies in other states had been formed during the period of the confederation, and Washington, in 1788, had written on the benefit of these organizations. But no effectual organization was formed in Virginia until 1811 when the "Richmond Society for Promoting Agriculture" was formed. John Marshall was President, James Monroe, Vice-president, Abraham Venable, Treasurer, George Hay, Secretary. This society was revived

[628] Wilson, Division and Reunion (1893), 50.

[629] The American Farmer, ii, 57, from an address to the Public by the "United Agricultural Societies of Virginia."

in 1818, with John Taylor of Caroline, a student of scientific farming, as new President.

Probably no more active society was established in Virginia than the Albemarle Agricultural Society.[630] This organization was formed in October 1817, and adopted a programme of "objects for the attention and inquiry of an agricultural society," contributed by Thomas Jefferson. Madison became President, Jefferson's son-in-law, T. M. Randolph, first Vice-president, ex-governor James Barbour, second Vice-president. A moving spirit was John H. Cocke of Fluvanna County, an intelligent farmer on a large scale and a frequent contributor of articles on agricultural subjects. The Albemarle Society, in addition to a discussion of farming problems, endeavored to secure the establishment of a professorship of agriculture at the University of Virginia. The fund raised by them was loaned out and lost, and the splendid opportunity was never seized by the State University. Another effort of theirs was to secure a union of the agricultural societies of Virginia. Such a union was formed in 1820. Edmund Ruffin, later editor of the *Farmer's Register*, the man who was to fire the first shot of the Civil War, was the Secretary and leading member. In an address to the Public of Virginia, they narrate the facts of the exhaustion of Virginia soil and the wholesale emigration from the state, and emphasize the importance of an increased knowledge of agricultural subjects, scientific and practical. They are united, they declare, not only for "the improvement of the practice," but also "for the protection of the *rights* and *interests* of agriculture." In consequence, they denounce the tariff, and send a memorial to Congress.[631]

All the activity of Virginia, therefore, was not that of General Assemblies, Governors, and Congressmen. Back of them,

[630] Original MSS., Letters and other information bearing on the Agricultural Society of Albemarle as well as on agriculture in general in Virginia may be found in a collection of MSS. compiled by N. F. Cabell (1807-1891) for the purpose of writing a history of Virginia agriculture. In addition to manuscript material, there are bibliographies of immense value to the student of Virginia agriculture. This collection is now in the possession of the State Library at Richmond, Va.

[631] American Farmer, ii, 37.

contemplating the sufferings of the state, studying crops, fertilizers, machinery, sheep-raising, and kindred topics were bands of farmers, many of them prominent citizens and politicians, it is true, earnestly fighting the economic battles of Virginia in her period of distress.

I do not find that Giles himself was prominent in the agricultural efforts of the agricultural leaders. He was, however, a farmer on a large scale and interested in progressive farming. He felt as farmers did; in exaggerated form, he interpreted their spirit, and their discontent gave him an opportunity for political appeal. With some hope of being heard, he could sound the clarion call for political revolution. When he wrote, therefore, it was, of course, for no merely educational purposes. His earlier writings were contributions to the campaign for the election of Crawford and were directed particularly against Henry Clay. However, when Adams was elected by the House, Giles joined in the chorus of Democratic attack on the new President with the determination of harassing his administration and of preventing his reëlection. And, from Mr. Adams's own writings, as well as from contemporary testimony, we know that Giles was not the least of those who disturbed the slumbers of the unfortunate New Englander. Additional interest is added to these assaults on President Adams by the fact that the path of the erratic Virginian and that of the caustic statesman of Quincy had crossed before this time. Readers of that acute, though acrid and unfair, commentary on men and measures known as *The Memoirs of John Quincy Adams* will find frequent mention of William B. Giles. During the years 1803-1808, the period of Adams's senatorship, these men, so similar in temper, but generally so different in ideas, seem to have been thrown together very frequently and not on unpleasant terms. At that time, Giles was the man of power and John Quincy, in characteristic Adams fashion, not unwilling to increase his own. How much influence the brilliant conversation of the Virginia leader and his veiled offers in return for Federalist aid may have had on Mr. Adams, we do not know; we do know, however, that Mr. Adams became converted to the Republican cause and that,

when he was out of political employment in 1809, while Giles still had great power, he received a safe berth as minister to Russia. We actually know that, on one occasion, Giles took Mr. Adams into his carriage, that he defended him when attacked by Federalists, and that, on another occasion, Mr. Adams actually records in his diary that all he could do in discussing a subject which Giles had exhausted was to "present some of his ideas in new lights." Now, however, in 1825, Mr. Adams, first honored by the government of the United States when Giles was influential, had risen until the House of Representatives had placed him in the presidential chair. Carrying with him still, under his Republican cloak, that Federalism which he had inherited, he of necessity became a target for those Republicans who still retained the ideas, as well as the name, of Republicans.

To Mr. Adams, Giles paid his respects in the first of a series of fourteen numbers published in the *Enquirer* from February to December 1825, under the title, "Political Disquisitions." The opinions of Adams on internal improvements are attacked on constitutional grounds. Significant, as underlying a large part of southern antagonism to this policy, is his assertion that internal improvements by the National Government endanger the slavery interests of the southern states. To a consideration of Adams, Mr. Giles returns in January 1826[632] with a merciless dissection of the famous message of 1825. Phrases loosely dropped by Adams in his exuberant enthusiasm for internal improvements are held up to the light and their hidden significance pitilessly revealed. In Giles's opinion, the General Government had no business meddling with such subjects. Internal improvements were an affair for the state governments and for individuals. Even when conducted by the states, they were of doubtful value. Witness, says Giles, the evil results of the Erie Canal and the total waste of money employed on the James River Canal, which works only injury to the country through which it passes. Let Government leave money in the hands of the citizens and let individuals use it in much needed

[632] In a series called "The Golden Casket—or, The *President's Message*—or, a proclamation of a great Civil revolution in the Government of this Union."

efforts for the reclamation and fertilization of the soil. Not confining himself to a discussion of the President's message, the author launched into a caustic review of Adams's career. Although, in 1808, Giles himself had testified in the Senate of the United States to the disinterestedness of Adams's conversion to Republicanism, now he declares the President was animated chiefly by desires for his personal promotion and aggrandizement. It was Adams, too, the Secretary of State, who was responsible for Monroe's political somersault and for all the illegal acts of that administration. And the moral of the story is: "Let us, then, at the next election look up to one for our President who stands voluntarily committed to preserve State Rights, and whose tried patriotism, sound wisdom and moral rectitude *could* afford us the best guarantee against all mischievous *schemers*, and ambitious encroachments." In other words, Giles had joined the great party in Virginia bent on defeating Adams. He threw all his force into the fight for Jackson, and, next to Ritchie, was the intellectual leader in Virginia of the anti-Adams movement. Indeed, through his vigorous articles and, especially, through his publication of a letter he had received from Jefferson in December, 1825, he attracted national attention, causing in particular an embarrassing controversy between Adams and the New England Federalists.[633]

Meanwhile, Giles entered politics again on his own account. A candidate for the United States Senate in 1825, he had received a respectable vote.[634] In 1826, he made an unsuccessful campaign for Congress,[635] then his faithful people of Amelia elected him to the Legislature, and, in February, 1827, the Legislature elected him governor of the state. In the Legislature, the two principal subjects under discussion during these years were the proposed convention for the revision of the constitu-

[633] Jackson managers in Washington were much interested in Giles's publication and egged him on. MS. letters of Giles to Tazewell and letter of Giles to Duff Green, May 24, 1829. The latter is in the Van Buren Collection, Library of Congress.

[634] Fifty-eight votes on the first ballot. The highest was 65. *Enquirer*, December 10, 1825.

[635] Against W. S. Archer.

tion under which Virginia had lived since 1776, and the usurpations of the General Government. The Convention bill Giles vigorously attacked, and, on the subject of the encroachments of the General Government, he brought in a long report and resolutions denouncing the policies of protective tariff and internal improvements. These resolutions of 1827 became the most famous of all the resolutions of Virginia on Federal relations since 1798. In the popular mind, the resolutions of 1827 were associated with the great resolutions of 1798, and the fact that Giles was instrumental in the passage of both was not overlooked.[636]

The principal opponent of Giles's programme was a man able and famous in his day, but now, like so many famous statesmen, unfortunately forgotten—Robert Barraud Taylor, from that consistent Federalist stronghold, Norfolk. A few words descriptive of the career of the great Federalist may be of interest. Born March 24, 1774, educated at William and Mary, from which he was expelled, along with the other participant, for a duel with John Randolph, he nourished his intellectual power by imbibing the doctrines of John Marshall, in whose office in Richmond he studied law. Then, moving back to his old home at Norfolk, he allied himself with the Federalists, to whom he became a pillar of strength. Once before 1827, he and Giles had met in the public arena: both were present in the Virginia Assembly of 1799 and had respectively attacked and defended the report of that year. Since that time, Taylor had added to his reputation by his defence of Norfolk in the War of 1812 and by his oration at Yorktown during Lafayette's visit in 1824. It was in answer to him that Giles delivered those long and able speeches of February 21 to 23 and March 2, on the constitutionality and expediency of the tariff and internal improvements. "What," he asks, "can we gain by the adoption of the tariff policy?" Agricultural interests can derive from it only injury. It has already shown its effects "in the de-

[636] The comments of Madison and J. C. Cabell on these resolutions are interesting. Madison defended the tariff; Cabell was bitterly hostile to Giles. See *Madison's Writings* (Hunt), and Mad. MSS., Library of Congress.

pression of prices of agricultural productions, and the consequent depression in the prices of lands from the Potomac to the Gulf of Mexico; indeed, throughout the whole agricultural country of the United States." It is the tax on the farmer, not for public welfare as the gasconading presidential candidate, Clay, would have us believe; but a tax "to encourage the idleness, and to pamper the wealth of manufacturing stockholders." It is an unprincipled tribute, to whose payment, he significantly suggests, the other classes of society will not long submit.

Two days after this encounter, began Giles's term as Governor of the Commonwealth. The position of chief executive of Virginia in 1827 was honorable but beautifully innocuous and impotent. The forefathers of the old state had been so fearful of loosing in their midst vicious whelps of George the Third, that they had chained up their Governors and left them little but the privilege of voicing their feelings, in not too unbecoming a manner, to their legislative masters. Governors were elected by the legislature for one timid year at a time up to three; they possessed no power of veto; and shared what little power was given them with eight councillors, over whom they had the privilege of presiding unless indisposed. With them, the Governor enjoyed the delightful privilege of commissioning the self appointed county nabobs as justices and sheriffs, of distributing the newly made map of the state, of commanding from his comfortable mansion the scattered militia, of reprieving and pardoning, of sending recommendations to the Honorable, the General Assembly of Virginia. Executive letters and minutes show Giles, despite his increasing suffering, to have been a faithful executive. True, during his administration, occurred a Treasurer's defalcation for twenty-five thousand dollars, but there was no reason to attribute it to executive oversight or negligence, and a similar defalcation had occurred in 1820. Day after day, the Council sat, faithfully reading petitions, and mercifully commuting the death penalty of free negroes, or pardoning slaves who were accused of stealing hogs or committing assault or murder, or rape, when it was shown that the country gentlemen who had convicted them had over-

strained the law or when petitions came, as they frequently did, from respectable whites, making known extenuating circumstances. Though an ardent slaveholder, Giles, as Governor of the state, was inclined to lament the severity of penal laws applying peculiarly to free negroes, and to regret, on account of the white prejudice against them, the administration of the law in some instances "more in rigour than in justice." Slavery to him was an evil, the transportation of the negroes from Africa had, however, in his opinion, been a blessing to the negro but was an injury to the white because of "intermixture" and its "discouragement to the labouring freemen." Now, however, it was a necessity; for he saw no remedy. Toward incendiary pamphlets, the Governor was bitter. Some of these exhilarating documents were circulated in Richmond in 1829 and 1830, whose "character and tendency" were "to excite insurrection among the people of colour." The Governor was advised by the Council to call the attention of the legislature to the propriety of providing by law "for preventing the introduction and circulation of papers, writings or publications and for the prohibition of practices designed, or having a tendency, to produce insurrection among the people of Colour."[637] At one time, rumors of a threatened insurrection of the blacks alarmed the population of several counties, but such an outbreak was to be postponed until the adventure of Nat Turner in 1831.

During his administration, Giles was also deeply interested in the improvement of the penitentiary system and hoped that Virginia would not be behind other states in meliorating the condition of the "frail" members of our society. But another subject was closer to the heart of this ardent southern Governor than pardoning slaves or repairing the armory or improving the penal system.

Raised to the executive office because of his espousal of strict construction, it would be expected of Giles that he would continue his utterances in its behalf. It will be found, therefore, that, in his messages, he did not fail to hurl his accustomed

[637] Executive Letter Book, Jan. 6 and Feb. 19, 1830, and Journal of the Executive Council, 1829-1830, p. 8.

vehemence against the usurpations of the National Government. In his first message, December 3, 1827, while presenting an elaborate scheme for internal improvements at the expense of the state, he deplored internal improvements by the General Government, with particular reference to its encroachment on the jurisdiction of the states over territory within their bounds. Agriculture, under the operations of the tariff, was becoming a losing occupation, and yet we were threatened with extension of the tariff. Then followed the significant sentence, "Under these circumstances, it is for the wisdom of the General Assembly to determine what measures are best calculated to arrest the progress of the evil, to relieve the people of the commonwealth, and to reinstate them in the full enjoyment of all their rights and liberties."[638] Still more significant is a special message of February 8, 1828, transmitting resolutions received from Georgia and South Carolina. Words were used in this document sounding very much like a threat of secession if the oppressive laws of the United States were not repealed. "I cannot help observing, however," he says, " that it must be a subject of the highest gratification to every citizen within the scenes of country now laboring under the unauthorized oppressions of the General Government, to know that the local authorities over them have competent constitutional means in their own hands for the purpose of doing themselves justice, if, most unfortunately, they should be forcibly driven to that deprecated resort: in fact, in the worst state of things, that the oppressed scenes of country afford abundant means to the local authorities to secure to themselves, in their intercourse with the world, all the salutary independence of nations; to protect themselves, without the least hazard, against physical force from every quarter; whilst through the same means, their wealth and prosperity might be augmented to an amount beyond any estimate which has yet been made in the contemplation of that view of the subject." It is strange, he declares, that the advocates of these unjust measures should be so blind to their own interests as to continue a policy which will drive the tributary sections of the country

[638] Journal of House of Delegates, Dec. 3, 1827.

to contemplate "these powerful allurements" which everyone knows will attend a change in their political relations with the world—a change from which the "inhabitants of the scenes of country receiving the unhallowed tribute . . . have everything to fear and nothing to hope."[639]

This message was variously received according to the political beliefs of the critics. In some cases, Giles was praised as "the able defender of the Constitution and the faithful watchman of America liberty." In other cases, toasts like the following were proposed: "The Union; Its blessings are too highly appreciated, to be jeopardized by the cant of Dr. Cooper, the intemperance of South Carolina, or the ravings of William B. Giles." To the suggestions of disunion, there came, even from the friends of Giles, apparently little favorable expression of sentiment. Ritchie assured "The National Intelligencer" and "all such *terrorists*" that no citizen of the state is so "mad" as to approve of "*resistance of the laws*, or a *dissolution of the Union.*" He thinks a fear that there is such a sentiment proceeds only from "exaggerated misrepresentations" of the Governor's message.[640] The legislature, on account of the lateness of the session, did not take up the subject until the following year. But, on February 24, 1829, resolutions were passed which declared that the tariff laws were oppressive and ought to be repealed, at the same time giving as their opinion that, in construing the constitution, "each state should be guided, as Virginia has ever been, by a sense of forbearance and respect for the opinion of the other States, and by a community of attachment to the Union, so far as the same may be consistent with self-preservation, and a determined purpose to preserve the purity of our Republican Institutions."[641]

Thus the Legislature. The Governor, however, waited for no timid legislature. He had practical things in mind that were not so radical as the threats contained in the message and these more moderate means of retaliation he revealed in one of the most interesting letters in tariff history—a letter dated

[639] Ibid, Feb. 8, 1828.

[640] *Enquirer,* Feb. 16, 1828.

[641] Ames, State Documents on Federal Relations, 157.

May 21, 1818, and addressed to Tazewell and Tyler, Senators from Virginia—

"The tariff bill has at length passed in its most destructive form—Is not an obligation imposed thereby upon the southern people, to counteract its effects? Have they the means of doing so, with perfect safety and certain efficiency? Could not this counteraction be produced by concert amongst the representatives of the tributary States? Most certainly. Never before were any people subjected to such plunder, and degradation, with such ample means in their own hands of doing themselves justice, without applying them to their object—Whilst the people of that scene (sic) of country have all the means, of effectually regulating the tariff at their own pleasure, they strangely permit others, to seize upon these very means, and apply them to their own advantage—Would not an internal excise upon domestic manufacturies (sic) brought within the limits of the plundered states, corresponding with the external imposts upon foreign manufacturies, brought from abroad, completely counteract the tariff upon foreign goods? Would not an excise upon all animals on foot, driven within the same limits teach the Western people, their dependence upon the Southern people, for a market? Most certainly—Then why not teach them this salutary lessdon (sic)? Neither East, nor West could object—It would be complimenting their own favorite political axiom, Protection of Domestic industry; applied to States instead of United States, industry—It will and must come to this; and the sooner the better—Great intermediate mischief would be avoided by it. The constitutional rights of the state governments to lay such excise, cannot be doubted—The duty to protect persons and things, is the true foundation of the right to tax the same persons and things. This duty to protect persons and things, commences, the moment they come within the limits of the respective States. The duty, and the right are necessarily contemperanous (sic); and the exercise of the right depends exclusively upon the discretion of the state legislatures respectively. This most clear and important point was unanimously settled by an act of Congress assembled,

the third March 1807 prohibiting the introduction of Slaves within the U. S. after the first January 1808. Suppose then; that the States of Louisiana, Alabama, Georgia, South Carolina, North Carolina and Virginia, were cotempranously (sic) to lay excises as before stated—Where would the Eastern people find a market for their manufacturies? or the Western people for their horses, cattle, hogs &c.? This measure would necessarily prove the actual dependence of the East and the West upon the South. Whereas the South with all these natural means, is artificially made dependent upon the East and the West—and most unjustly and degradingly plundered by both. 'it cannot, will not come to good.' What would be the effect of calling upon the Secretary of the Treasury before the rising of the present Congress, to report to the next; upon the following enqueries? First:—What effect would be produced upon the wealth, and prosperity of the whole United States by the abolition of all discrimating (sic) duties, and substituting an uniform ad valorem duty of ten per cent in their stead? 1st As it regards agriculture, 2d commerce, 3d navigation, 4th manufactures, 5th revenue, 6th Morals—Second:—Can any means be devised, through the medium of foreign commerce, to encourage and protect aggriculture, in such a manner, as to give 50 cents per bushel to every wheat grower, for every bushel of wheat brought by him to market—To the Tobacco-growers, 2 dollars for every 100 pounds.—To the cotton grower 3 dollars for every 100 lbs.—To the rice grower, one dollar for every 100 pounds? If no such means can be devised, to report; whether similar bounties ought not to be paid out of the public treasury upon the most obvious principle of equality and justice? Third—Whether bounties upon the aforesaid products, as the specified rates aforesaid, would be more, than equivalent compensation to the growers of the aforesaid products, for the duties imposed upon all articles, necessarily consumed in raising them. I here deem it my duty to make these suggestions to you, Gentlemen, before the rising of the present Congress, and beg your best consideration of them. I have, a few days since, given similar hints to

Mr. MacDuffie;—Be pleased, Gentlemen, to accept my most respectful and friendly regards."[642]

It was, however, not only by messages and private letters, that the Governor sought to aid the cause of strict construction and the candidacy of Andrew Jackson. The dignity of the high office he now occupied caused no cessation of his labors with the pen, meant no withdrawal from heated political and personal controversy, brought no forgetfulness of his enmity to John Quincy Adams. On September 7, 1827, Governor Giles published in the *Enquirer* a short article, accompanied by a letter from Jefferson to him dated December 26, 1825,[643] denunciatory of the usurpation of the Federal Government. Attempts had been made to enlist the name of Jefferson in support of Adams's candidacy, and the publication of the letter to Giles was intended to demolish such efforts. A sensation was immediately caused. Replies and counter replies appeared in the leading papers of the country. Governor and President and editors joined in an exciting debate, adding zest to a campaign already sufficiently fiery. On March 1, 1828, appeared, over the signature of Giles, another article, widely copied, which contained five reasons for his opposition to Mr. Adams's candidacy. Mr. Adams, he declares, is not a Republican, is lacking in ability, and is neither an "honest" nor an "incorruptible politican." Ritchie claps his hand in applause. To him, Giles is gifted "with a moral courage equal to that of any man living."[644]

In the year 1829, there came from the pen of Giles two very significant essays. The first was an answer to an inquiry by Lafayette as to the practicability of converting slave labor into free labor in Virginia by the use of colonization societies. Giles is led in this to a discusson of the slavery question. Admitting slavery to be an evil, he thinks no remedy for it has been found. The evil, too, has been greatly exaggerated. The interesting portion of the article, however, is the evidence adduced on the

[642] This letter is in the Tazewell Collection and kindly furnished, along with others, by Mr. E. J. Woodhouse of Yale University.

[643] Referred to above.

[644] *Enquirer,* March 25, 1828.

subject of slavebreeding in Virginia. Slavetraders, carrying slaves from Virginia and Maryland, "are," he declares, "doing tenfold more in one year, towards the removal of the slave population from this section of country, than the Colonization Society . . . has been able to effect in twelve. The extensive scenes of rich country to the South and West, for the most part, but thinly settled, affords an almost boundless reservoir for the reception of slaves; and slave labor being more profitable there, than here, and, consequently, the price of slaves higher, furnishes strong inducements for their removal to those sections of country. The demand which exists for them there, can only be supplied from the scene of country described;—the slave trade from Africa to that country being completely at an end. From these causes, numbers of slaves are removed annually from this scene of country, and shippd from Richmond and Norfolk to New Orleans; and numbers are also carried on foot to South Carolina, Georgia, Alabama, Mississippi, Tennessee, Kentucky and the country west of these States. Besides, the slaves thus removed consist mostly of boys and girls, about the age of puberty, the period of life when propogation is just commencing; and of course, their removal produces the most effectual check to the slave population, according to numbers, which could possibly be devised."

Appended to the letter to Lafayette as it appears in *Political Miscellanies* is a statement from Jos. C. Haley, chief clerk in the collector's office in Richmond. According to this statement, three thousand negroes a year were shipped from Norfolk during the years 1826-1829, and over two thousand either by land or by water from Richmond. No estimate is made of the numbers sent from Petersburg or other places.

The other literary effort of importance in 1829—and Giles's last will and testament to his people—is significant as bearing on the question of secession. It is a series of articles published in the *Enquirer* from June to October, under the title—"Retrospects." If the tariff and internal improvement policies are persisted in, disunion is inevitable, he thinks, and, though it would be disastrous to the whole United States, it would not be

disastrous to each of the several states. "A consolidated despotism would be an infinitely greater disaster than disunion." In case of disunion, there might be four confederacies, New England, the Middle States, the Western States, and the South. Nothing but loss or danger could come to the first three; to the South there need be no reason for fear. "The Southern States would be left to the enjoyment of all the good things their God has given them, and to which they have superadded their own labor; the proceeds of which are now transferred to the Northern and Western States, for their own enjoyment." When the real injustice of the tariff is known, either the tariff will have to be put down to a revenue basis, or this union must be dissolved. No people with common sense "will ever long submit to such an unnatural and unprincipled state of things." In the event of an attempt at coercion of one part of the United States against another, the people of Europe would take part—and on the side of their interest. Where is this interest? With the part of the United States which sends them $40,000,000 of exports or with that part which sends them $10,000,000? . . . So here in 1829, this Patriarch Republican has the whole secession programme worked out; intolerable conditions; a wealthy South, European intervention, Cotton is king.

Two days after the appearance of the last article of the series described above, Giles became a member of the Virginia Constitutional Convention of 1829-30.

CHAPTER XV

THE CONVENTION OF 1829-30

Within the last term of Governor Giles, fell the first of those historic conventions in Virginia called for the purpose of revising the fundamental laws of the Commonwealth. The constitution of Virginia under which the state began its existence had been adopted in 1776 by a convention, whose business had been, not only the adoption of a constitution, but also the government of the state at a time when the regularly constituted authorities had deserted their posts or lost their power. Although the document had been written by a body not selected for the particular purpose of writing it, and, in a time of stress and conflict, had been hurriedly thrown together, it nevertheless remained unchanged for fifty-four years. From the first, it had been criticised by Jefferson, who, again in the Notes on Virginia, published in 1782, had pointed out in detail the defects of that instrument. Representation in the House of Delegates was equal for all counties regardless of size; suffrage was left as it had been in colonial times, based on the possession of a freehold of land; the legislature was supreme; to it, the Executive was made strictly and meekly subordinate because of the Governor's election by the General Assembly; gubernatorial duties and responsibilities were divided among nine men; and the county courts, with all their far-reaching powers, were erected into a closed corporation of leading families. As time passed, as towns grew, as the population moved ever more rapidly toward and across the Blue Ridge chain of mountains, as a Democratic wave arose and, sweeping over new and western states, beat back upon the institutions of the parent commonwealths, the law of 1776 became more and more unacceptable. An insistent clamor was raised for reform and amendment. Petitions were sent down to the legislature whenever it met, praying for the calling of a new convention; Jefferson broke silence in 1816 and again in 1824 in letters which men might read in the newspapers; a significant convention of reformers was held in 1816 and again in 1825 at Staunton. By 1828, the movement had

become too strong to resist and so the legislature, on January 31, passed an act authorizing a vote of the people. The returns were favorable to the reformers, so the legislature provided on February 10, 1829, for the calling of the convention.

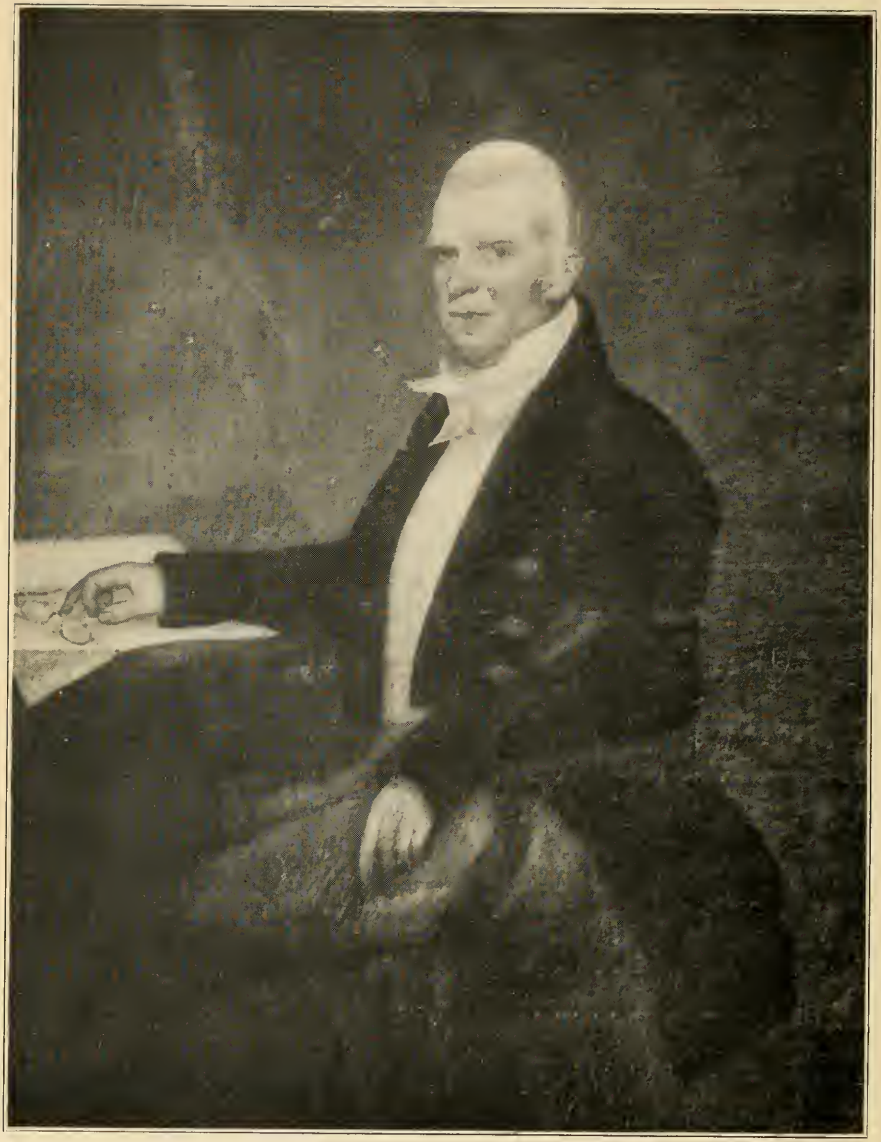
Giles had viewed the situation with growing interest since 1817 when he had filled column after column of the *Enquirer*[645] with protests against the movement. The original constitution was to him the first and best. Instead of immolating it on the altar of whim, caprice, and restless discontent, the people of Virginia, he thought, ought to give thanks and adoration to a superintending Providence, who made their forefathers the instruments of handing down so signal a blessing. Again, in 1827,[646] when the matter had come before the legislature while he was a member, he had delivered a long and stirring speech praising the very elements of the constitution which reformers desired to change. Now, in 1829, as Governor of the state, he signed the bill providing for the meeting. Since it had to meet, he rejoiced[647] that, despite his illness, his office, and the active campaigning made by his opponents, he had been chosen from his district as one of its four representatives.

When, on October 5, the delegates had come together, the gathering of men was such as is seldom seen in American history in one assembly. The deeds of some of these men formed significant chapters in the annals of the Commonwealth and of the nation, and the achievements of others were to be the material for much of the work of the future. One delegate had, more than any other one man, written the constitution of the nation, and battled for its ratification in the Old Dominion, had been Congressman, Secretary of State, and, for eight years, President of the Republic. The presiding officer, chosen this fifth of October, had twice been Governor of the state, represented his country at three foreign courts, held two cabinet offices, and, succeeding him of whom we have just spoken, had given to the world the famous Monroe doctrine. There,

[645] Feb. and March.

[646] Jan. 26. Speech in Political Miscellanies and in *Enquirer,* March 1, 3, 1827.

[647] Executive Letter Book, June 24, 1829.



WILLIAM BRANCH GILES

Chester Harding's portrait of Governor William Branch Giles, 1829, in possession of Virginia Historical Society

too, was the judge who had presided over the trial of a Vice-president and who had, by his far-reaching decisions, not only made for himself an imperishable name in the history of Jurisprudence, but, as much as any one man, had given direction to the current of political thought among his countrymen. There was present the eccentric and pathetic but brilliant John Randolph of Roanoke—who, more than any other, attracted the crowds that came from Virginia and surrounding territory to hear the debates of this famous assembly. Congressmen, senators, judges, governors, cabinet officers, and presidents, past and future, with a power born of mighty ambition or rich experience, fought out on this arena questions of political science and constitutional law. *Par inter pares,* though leaning upon his crutches and suffering from recent illness, appeared William B. Giles—the hero of many a parliamentary conflict, the Charles James Fox of American debate—as his admirers down to the present have loved to call him. "He was not expected," says one who was present, "to take that active part in the discussions which he had been wont to assume in former days. He was regarded as the leader of the reserve corps, ready to bring up his powerful reinforcement, when it should be needed."[648]

On frequent occasions, he was, however, to take very energetic and conspicuous part. Giles stood in the ranks of the opponents of reform, of the friends of eastern Virginia. For it was, in the main, a fight of Tidewater and the Piedmont against the valley and the Trans-Allegheny sections of the state. The transmontane regions demanded a *white basis* for representation; the east demanded a mixed basis of white population and taxation. The west thought it unjust that forty-seven per cent of the population should have only thirty-three per cent of the representation. They could not see how it was reasonable that Warwick county in Tidewater, with *six hundred and eighty-eight* free white inhabitants, should have ten votes in the House of Delegates while the county of Shenandoah in the Valley, with nineteen thousand, five hundred and eleven free white inhabitants, should have only the same power. On the

[648] Pleasants in Southern Literary Messenger, xvii, 147.

other hand, the east did not see the justice in handing over the control of the state to that section which paid the smaller portion of state taxation, especially as the property of the east was partly in slaves, which the small farmers and millers or miners of the west might emancipate. Eastern Virginia demanded protection for its peculiar institution, just as eastern South Carolina had done, and just as Calhoun was demanding for the slave holding minority of the nation. After all theorizing about the fundamental principles of law and government, everyone knew that Hezekiah Niles was right when he said: "The greatest question before the Virginia convention is the perpetual duration of negro slavery,"[649] and that Monroe read the feelings of the members correctly when he declared that "if no such thing as slavery existed, the people of the Atlantic border would meet their brethren of the west, upon the basis of a majority of the free white population."[650]

On the fundamental question of the basis of representation, Giles spoke portions of two days, and made a profound impression. "We recollect," says a writer in the Southern Literary Messenger, "to have heard him speak but once during the session of the Convention, but we could well conceive that in his palmy days he must have been a host in himself. . . . His style of speaking was very different from anything we saw, even at that day, and evidently belonged to another period. He indulged in none of the frantic gesticulations with which orators of the present and of a long preceding day were wont to give force to their arguments. He neither vociferated until he was unintelligible, nor grew hoarse of utterance, nor became red in the face, nor sweated like a cart horse in the effort to give birth to his ideas. His manner resembled that of a man engaged in earnest conversation—his tone was animated, as his genius rose, but it never became harsh or boisterous. His words appeared to flow in a continued, uninterrupted, lucid stream, strong it is true, but strong without fury, pregnant with thought, but full without overflowing. The great powers of his

[649] Niles Register, XXXVII, 145.
[650] Debates of the Convention, 149.

understanding were apparent, from the very marked effect which he produced on the Convention."[651]

Beginning his speech with an ardent expression of a desire for harmony, he entered into an elaborate defence of the constitution adopted by the fathers during the troublous days of revolution. That constitution was the "best constitution that was ever presented to any people under the sun." It was not, as charged, thrown hurriedly and carelessly together on account of the imminent danger surrounding the famous convention of 1776. Its adoption opened indeed "an aera in the science of politics." Out of that blessed "aera" we had passed into the degenerate days of a Federal government possessing enormous power and patronage, enacting protective tariffs, schemes of internal improvement, and the whole American system. "The best improvement that could be adopted now would be the transference of the present Virginia system to the Government of the nation." Having lauded the work of George Mason to the skies, as the sacred document under which we had so happily and prosperously lived for fifty-four years, Governor Giles took up each of the alleged defects of that holy writing and found that alleged defect to be a real jewel of excellence. Was the executive said to be powerless—to lack energy? But "if we have had an Executive in Virginia, which has gone on so smoothly, so easily, so little known, and scarcely felt for fifty-four years, discharging all its duties," why should it now be changed? As to want of power in the Executive, so far as his experience had gone, although he had been often accused of an inordinate love of power, he then had as much power as he wished to have, or ought to have, or as any other human being should ever have. Executive patronage and power were the sure causes of all political mischiefs.

Did one say the suffrage was now illiberal, that it was unfair to impose a freehold restriction on land? But this, it was answered, was a mark of the "wisdom of our forefathers" and "the wisest provision that ever was made in any Constitution, is that which declares that the right of suffrage should remain

[651] Southern Literary Messenger, vol. 17, 297.

as it then was."[652] "Look at every State where Suffrage has been extended to Universal suffrage and you will see universal disorder, intoxication, and demoralization of all sorts"—for instance, New York which had "conferred a blessing on themselves, by extending the right of suffrage to people of all colors, red, black, white and yellow." Was the system of county courts criticised as inefficient and corrupt? However, "the organization of the County Courts is marked with peculiar wisdom." This system we had received directly from our Anglo-Saxon Ancestors—indeed from a period antedating the present by 1500 years.

In defending the eastern position on the great crucial subject of the basis of representation, Giles fell back on the doctrines of John Locke and found a preëxisting State of Nature, the formation of a social contract, and the erection of "free, legitimate" governments for the protection of both persons and property. The Bill of Rights, from which western men drew so many arrows of argument, gave no trouble to Giles, even if it did declare all men "by nature, equally free and independent" for "the Bill of Rights detracted nothing from the Constitution by preceding it," and was "an essential part of the Constitution." Nor could he see any injustice done the west by giving the east representation for the protection of its property; for the eastern people had both persons and property to protect and could not make war on the west by harmful legislation without at the same time doing themselves an injury. But if the white basis were adopted and power put in the hands of the west, the people on the other side of the Ridge could injure the property of the east without injuring their own because of the difference in property owned by the two sections—the disproportion of slaves. For Giles was frank enough to admit that the curse of slavery, whose protection, however, he so zealously demanded, was the "stumbling block" confronting the convention at its very threshhold, and interposing to interrupt the "happy spirit" of the discussion.

[652] The Constitution of 1776 merely adopted the then existing suffrage arrangement.

Indeed, the happy spirit of the discussion was at times very sadly interrupted. Talk of breaking the convention, of the formation of a new state in the west, even of the separation of the Union, and of the dreadful vicissitudes of civil strife for the whole Union, was heard in and out of the Assembly. And Giles gave it as his own sober opinion that "the forcible separation of Virginia, must and will lead to a separation of the United States, come when it will. . . . Whenever the awful occasion should arise for calling in force to settle collisions and divisions amongst ourselves, the destinies of this country will not be settled by the physical force on the west side of the Ridge, nor of the whole United States alone . . . the physical forces of the commercial nations of Europe, would settle the destinies of the country in that deprecated event. In such a case, New York would have more to dread than Richmond and people east of Virginia could hold out to Europe "the most attractive and influential douceur that could possibly be offered—Commerce—the most valuable and seductive in the world." Here again, we have one of the fatal theories on which secession was to be based in 1860.

In the "basis" speech which I have now outlined, Giles made clear his position on all the important matters to come before the convention. He announced himself a representative of the east, of the slave-holding aristocracy, of the conservative property interests of the state, opposed, as usual, to change and reform for fear of endangering its security. Not a disciple of Jefferson now burning with the sense of all injustices, and eager to spread the blessings of democracy, did Giles stand in local politics, but rather with those who, like John Randolph, were prepared to deny the authority of the author of the Declaration except on "the mechanism of a plow."[653]

Besides delivering the speech on the basis, Giles took active part in the discussion of the arrangements for the Executive—in which he was peculiarly interested—and the Judiciary. On one feature of the latter, occurred the most able and eloquent debate during the whole convention. The Judiciary committee

[653] See Ambler, Sectionalism, 161.

had reported that "no modification or abolition of any court shall be construed to deprive any judge thereof of his office." Here was the same question discussed by Giles in 1802, when the Republicans in their early fervor were abolishing the Circuit Courts established for the comfortable refuge of Hamiltonians just before the retirement of the Federalist party from the control of the nation. And adding to the dramatic character of the conflict now was the appearance on opposing sides of John Marshall, just rewarded in 1801 for his zealous Federalism, and William B. Giles, the floor leader of the Republican party at that time, and the bitterest political enemy who ever attacked the great Chief-Justice.[654] Fighting side by side against Judge Marshall were now Littleton Waller Tazewell, later Governor of the State, and Philip Pendleton Barbour, later to be Associate Justice of the Supreme Court of the United States. One who listened to that debate declared it was "one of the most brilliant exhibitions of the convention."[655] The question was settled by placing in the completed constitution the provision that "no law abolishing any court shall be construed to deprive a judge thereof of his office, unless two-thirds of the members of each House present concur in the passing thereof."[656]

On January 15, 1830, the convention finished its work. The conservatives had won. An unsatisfactory compromise had been adopted for the distribution of representation. The suffrage was extended to leaseholders and householders. The government of counties still remained in the hands of justices. The term of the Executive was extended to three years and the Council was reduced from eight to three in number.

Less than two months after the end of the convention expired Mr. Giles's term as Governor. He had then finished his work. Retiring in ill health to Wigwam, his home in Amelia county, he could only wait the inevitable early summons. In April, he was again elected by his faithful people of Amelia

[654] They had, however, become friends.

[655] Grigsby—Convention of 1829-1830.

[656] Constitution of 1830, Article V: 2.

county to represent them in the Legislature, but feeling the end was near, he thanked them for their unswerving loyalty in the past and declined from necessity their last honor. On December 4, 1830, the fires of his spirit burned out. The bar of the county, "in consideration of the eminent services of the deceased and as a testimony of their respect for his elevated character," wore crêpe for thirty days.[657] And Thomas Ritchie, on December 9, declared "a great man has fallen in Israel." No man knew him better than Ritchie, who had supported him and criticised him, and the judgment of the famous editor now is not without importance.

"Mr. Giles, in point of native ability, was one of the first men of his country, and of his age. His views were extensive, the moral force of his character equal to that of any man we have ever known, and he was one of the first parliamentary debaters of his time. He has been in public life for nearly 40 years, distinguished in every station which he filled; in the State Legislature, in both Houses of Congress, in the Executive chair, and in the Convention of Virginia, he has always been in the first rank—and has left the traces of his great talents upon the history of his country. For several years he has been afflicted by a severe malady; but nothing could depress the Energy of his mind. At length, his frame yielded to the repeated attacks—and he is gone forever."[658]

[657] Order Book of the Court of Amelia, December Court, 1830, 208.

[658] *Enquirer,* Dec. 9, 1830.

ILLUSTRATIONS

The original of the frontispiece is a miniature owned by Mrs. James W. Sharp, formerly Miss Elizabeth Townes, a great grand-daughter of Governor Giles. It was painted in 1813 by an unknown artist.

A letter dated February 6, 1813, written by Senator Giles to his wife says: "The miniature painter called on me at the Senate-Chamber this morning, and I immediately returned with him to my chambers and had one sitting for the miniature. He requested me to say to you that you may be assured of a striking and animated likeness. This occurrence is particularly agreable to me, as I hope it may contribute in some small degree to the happiness of my beloved Frances, and to see her happy would be the delight of my heart."

Another miniature was owned by the late Mrs. William Overton of Louisa County, Virginia. Its history seems to be unknown.

The picture of Giles facing page 207 is from a life size original painted by Chester Harding in 1829 and now in possession of the Virginia Historical Society. Harding came to Richmond while the Convention of 1829-30 was in session, especially to "take the heads" of members of that body. He painted portraits of Chief Justice Marshall, John Randolph of Roanoke, Governor William B. Giles, and others—eighteen in all. On the death of Governor Giles, the Harding potrait became the property of William B. Giles, Jr.

It was regarded as an excellent likness of *Governor* Giles—Giles in old age and worsted by disease. A portrait of him by Gilbert Stuart made about 1795, now in the possession of Clarence B. Bowen, of Brooklyn, N. Y. shows him to have been a handsome man. Two miniatures of him—one of them made in 1813 and the other, it is thought, earlier, bear the same testimony. There is a third portrait, painted in 1816 by Bass Otis in Boston, and now in the possession of Mrs. Frances Gwynn Townes of Richmond.

Plates of the five original extant pictures of Giles appear in "The History of the Celebration of the first Inauguration of George Washington as first President of the United States" (1892) edited by C. W. Bowen, p. 112. Interesting notes are given—though the notes are not altogether accurate.

BIBLIOGRAPHY

I have not attempted in the following list to include all the titles which I have used. An exhaustive bibliography would take in a large part of the material bearing on American and Virginia history from 1790 to 1830, and would make a volume of its own. The following, however, have been of service, particularly the manuscript and newspaper material.

I. MANUSCRIPT

Adams, Henry—Transcripts of letters of public men.

In the three volumes loaned me by Mr. Adams there are no Giles letters but some letters of interest in the study of the Jeffersonian party. Some of the originals of these letters are now in the Library of Congress.

Cabell, N. F.—Manuscripts relating to the history of agriculture in Virginia, collected by N. F. Cabell; one bound volume in Virginia State Library.

Among these papers are autograph letters of distinguished Virginians interested in agricultural improvements particularly after 1812, and a valuable bibliography of Virginia agriculture by Mr. Cabell.

A complete list of this material is contained in a pamphlet issued in 1913 by the Virginia State Library, and edited by Assistant Librarian, Earl G. Swem.

Commissioners of the Revenue, Personal Property Books for Amelia County.

The Virginia State Library has the commissioners' books for all the counties from 1782 to 1863.

Executive Letter Books—Virginia State Library.

These letter books contain contemporary transcripts of Governors' official letters.

Giles's letters are found in volumes for 1827-1830.

Executive Papers—Miscellaneous—Virginia State Library.

In the 1136 boxes of these papers is much valuable material. Original drafts in Giles's handwriting, of the letters copied in the Executive Letter Books, are found in the boxes for 1827-1830.

Giles letters found in numerous collections. There is no collection of Giles papers. Such as there were, were probably destroyed in the Richmond fire in 1865. By persistent searching in various libraries and private collections, I have found, however, a number of interesting letters.

The Jefferson, Madison, Monroe, and Van Buren Manuscripts, Library of Congress.

These manuscripts contain some valuable letters by and to Giles. Many of them, not bearing directly on Giles himself, throw light on the events in which he took part.

Order Books, Will Books, and Deed Books of Amelia County in the Clerk's office, Amelia Court House.

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The Virginia Historical Society Collections.

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Adams, John Quincy—Memoirs; comprising parts of his diary from 1795 to 1848, Philadelphia, 1874-1877. 12 vols.

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Ames, Fisher—Works—with a selection from his speeches and correspondence. Edited by Seth Ames. Boston, 1854, 2 volumes.

Gallatin, Albert—Writings, edited by Henry Adams. Philadelphia, 1879. 3 vols.

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Address of the Honorable William B. Giles to the people of Virginia. 1813. 123 p.

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Speech . . . on the bill . . . entitled, "An act to repeal certain acts respecting the organization of the courts of the U. States." Delivered . . . February, 1802. Washington and Boston, 1802. 20 p.

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Second Speech of Mr. W. Giles, delivered in the Senate of the United States December 2, 1808; on the resolution offered by Mr. Hillhouse to repeal the several acts laying an embargo. Boston, 1808. 20 p.

The New Embargo Law, and Mr. Giles's Speech on the same. n.p.n.d. 23 p.

Speech delivered by Mr. Giles, in the Senate, on the 13th February 1809; in support of the following resolution [for the repeal of the Embargo laws] moved by him on the 8th of the same month. n.p.n.d. [Washington? 1809] p. 40.

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[659] The dates of the lives of the various newspapers are sometimes apparently impossible to find. A Virginia State Library Bulletin issued October, 1912, gives a list of newspapers in the Virginia State Library, Confederate Museum, and Valentine Museum. The work has been carefully done by Mrs. Kate Pleasants Minor of the Virginia State Library. The Check list of American newspapers in the Library of Congress, Washington, 1901, is of great value.

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APPENDIX

RETROSPECTS No. XV

Compilations—Reviews—and Reflections

"UNION"

Division—disastrous to the whole U. S. But not equally disastrous to each of the several States.

It will appear from an examination of the last Number, that both the author of "Union" and the writer, concur in opinion; that the Union of these states is actually put in jeopardy, by the various intermeddlings and usurpations of the General Government; but particularly by the Tariff and Internal Improvement Acts. Both, also, concur in opinion, that such disunion would, probably, be extremely disastrous to the whole United States, and ought to be deprecated by every real patriot in the nation; but they differ in this material respect. The writer of "Union," applies the disastrous consequences of disunion, in an equal degree, to every individual state—whereas, the writer thinks, the disastrous consequences would be much greater to some States, than to others; nor would the writer, so far concur with the author of "Union," as to admit, that disunion would be the greatest possible disaster, that could befall the U. S., should the author entertain such opinion.

The writer thinks a consolidated despotism, would be an infinitely greater disaster than disunion; of course, he thinks, the Tariff Acts, and Internal Improvement permanently fixed upon this Union, as an infinitely greater disaster—as they must necessarily eventuate in the very worst of consolidated despotisms; provided the Union should continue under their most baleful influence. The inevitable effects of such a government, would be the utter annihilation of human liberty and with it, all human rights, prosperity and happiness. The writer has often been astonished to observe, how little the real characteristics of the Tariff and Internal Improvement Acts, have been considered and understood. It seems as if the public mind cannot be brought to bear upon their vicious, militant

elements, and consequent immoral tendencies. It is not infrequent, to hear the most zealous devotees to these measures, express the greatest horror and alarm, at consolidation, and consequent despotism; whereas, a very little reflection, ought to convince every man of sound mind, that they are precisely the same thing, clothed in different garbs, and called by different names.

This essay, published in the Richmond *Enquirer,* Oct. 2, 1829, is reprinted here because it illustrates the general character of Giles's voluminous newspaper writing and also because the views in the article are in themselves decidedly interesting. They suggest the intense hostility of the South to the Protective Tariff, the willingness of some in 1829 to view disunion as a lesser evil than the "usurpations" of the National Government, and their opinion as to the peculiar strength of the South in case of disunion and war.

The only change which I have made in the paper as originally published is to paragraph it. Mr. Giles or Editor Thomas Ritchie didn't bother much about such small matters as paragraphing.

What constitutes the difference between a federal and a consolidated government? It consists simply in this: A federal government confines its jurisdiction strictly to general and external objects. A consolidated government, includes within its jurisdiction, not only general and external objects, but all objects of internal concerns. Of which description of objects, are the Tariff and Internal Improvement Acts?—especially when the Tariff Acts assume the character of protecting, internal industry, and directing the internal occupations of individuals? Most certainly, these are objects of internal jurisdiction, and the government which exercises jurisdiction over them, as well as over all general and external objects, must be a consolidated government, in all its essential, practical characteristics, whatever be the nomenclature affixed to it. The writer believes there exists but one opinion, as to the ultimate effects of a consolidated government in the U. S.—that it must produce despotism, and destroy freedom. Under this view of the subject, it is evident, that the General Government, as now administered, in exercising jurisdiction over internal, as well as general and external concerns, is a consolidated government—is, in fact, already a despotism; and time is only wanted, to satisfy everyone, when it is too late, of its despotic character.

Directing and controlling the property, capabilities and talents of individuals, instead of leaving them to the control of their owners, is the very essence of despotism; and this is the identical ground assumed by Messrs. Adams, Clay, and Rush, in justification of the Tariff Acts.

Believing, then, that the Union is put in hazard, by the various and complicated usurpations already in practice, by the General Government, the writer thinks, the time is come, when it is the duty of every lover of "Union," to examine well, and estimate the consequences of disunion, with all its hazards, and a consolidated despotism, with all its inevitable, deplorable certainties. If the usurpations of the General Government be continued, to this issue we must come at last; and when we do, the writer most earnestly hopes and trusts, with Mr. Jefferson, that there can be neither doubt nor hesitation. The choice must be, between disunion with liberty—and consolidated despotism with slavery. As it regards the relations of the U. S. in their present condition with foreign nations, it is self-evident, that it must be the same throughout the whole—being, in that respect, one government; and of course, all parts must participate equally in the same foreign relations—but very different will be these relations with the different States, in case of disunion. To present this important subject in a clear point of view, it will be necessary to examine the natural relations of different sections of the U. S. toward each other; and with the foreign, commercial nations, growing out of their different productions and occupations.

Let, then, the six New England states, including Vermont, be presumed to constitute one confederacy, in case of disunion—what, then, would be the relations of those confederated States, separated from all the rest, with the commercial nations of Europe?—particularly with Great Britain, whose immediate relations with these States, whether united or disunited, must be more important, than the commercial relations with the other European nations, arising from her great ascendancy over all other nations, both in regard to her naval power, and her commercial capital? This section of the U. S., would

present the relation of rivalship, with all commercial foreign nations, particularly with Great Britain, with scarcely one single natural tie of mutual accommodation. They are strictly rivals in almost all their relations—in Commerce—in Navigation—in Fishing—and in Manufactories,—whilst the only subject of commercial accommodation, would consist in their supplies of live stock, and some other notions for the West Indian market. It is presumed, that the whole amount of agricultural products exported from those States, would not amount to $2,000,000, out of an export from the whole United States, exceeding $5,000,000. Hence, it is evident, that these States, in their natural condition are necessarily and essentially rivals; and can never, by any artificial means, which would not be ruinous to both parties, become customers of the commercial nations of Europe. Rivalship is a state of hostility, not of friendship; hence, little or no advantageous connection, could take place between those States, and any one of the commercial nations of Europe; and, so far, they might be said to be independent of those nations—that this boasted, positive independence, would add very little to the wealth and prosperity of those positively independent States.

New York and New Jersey might form another confederacy, or it might include Delaware, Pennsylvania and Maryland. In either case, the actual relationship between those States, and the commercial States of Europe, would be nearly the same. New York is, at present, an Empire in herself—but much of her greatness is artificial, not intrinsic. The great commercial city of New York, and the twenty-five millions of bank capital depend upon contingencies, not upon intrinsic, paramount causes, and her intrinsic resources, or her native productions for exportation, will be found not to be much greater, than those of New England. The only additon to them, of importance, consists of breadstuffs; and those are so highly dutied in Great Britain, as to amount, in ordinary times, to a prohibition, and they are not wanted, in the other commercial nations of Europe. The same rivalship will apply to the whole of the other States, thrown into this confederacy. The whole of these

States are the rivals, and cannot be made the customers of the commercial States of Europe—and hence, in case of forming this confederacy out of the separation of the present United States, these States must, in the fixed, unalterable nature of things become rivals and not customers of the commercial States of Europe; and out of this rivalship must, necessarily, come hositility, not friendship. The cities of New York and Philadelphia, particularly New York, present the most powerful and alarming rivals to London and Liverpool in the whole world; and so far from Great Britain cherishing any disposition to foster and increase the wealth and prosperity of either of these cities, particularly New York, she would be delighted in being afforded an opportunity of prostrating her most formidable rivals, and even laying the City of New York in ashes. New York, therefore, would have more to dread, in case of disunion, than any state in the Union; especially when, independent of the effect of stripping her of all her artificial resources, arising from her present connection with the Southern States, and casting her upon her own means, she would become placed in a hostile attitude with Great Britain—with her great city exposed to British power on the water, and, with her Northeastern frontiers open to attacks from Great Britain, through Canada—now containing a population exceeding half a million of souls, and rapidly increasing both in strength and population—her fortifications strengthened every day. New York, therefore, without the possibility of gaining anything, would be placed in greater jeopardy, by disunion, than any other state in the Union. The whole native productions, from this supposed confederacy for exportation, would fall short of 8,000,000, whilst their points of rivalship with the commercial nations of Europe, would be little less than those of the New England states. These states, then, in the unalterable nature of things, in the event of disunion, must become the rivals, not the customers, of all other commercial nations: But it is difficult to say whether more relatively dependent upon, or independent of, them; but certainly without any increase of wealth and prosperity arising from the direct and extensive rivalship.

The Western States, Kentucky, Ohio, Indiana and Illinois, might form a separate confederacy. From their remote position, they would have very little connection with the commercial nations of Europe; but to its extent, it would be rather that of mutual accommodation than rivalship; and so far their relation would be friendly rather than hostile. The strange notion of the Western States rivaling the manufacturing nations of Europe, particularly Great Britain, is most absurd and preposterous, and would be ridiculous in the extreme, if it had not already been used to bring about the tariff, with all its horrible effects. The notion of rivaling a nation in manufacturing, in which there is a perfect division of labor, and in which the operatives are content to labor all day, and all night too, if necessary; and, whether content or not, are compelled to perform this labor without sufficient bread or covering, by another nation, in which the operatives are not only perfectly free from all restraints—demand high wages, and require good clothing, and an overabundance of food—and, moreover, the real governors of the nation are extravagant, nonsensical and preposterous. Whenever the operatives are permitted to vote under the blessed influence of general suffrage, they, of course, become the governors of the nation, and thus they become absolutely incapacitated for successfully rivaling operatives not blessed with the same great privilege of the elective franchise. The time necessarily required to qualify an operative for performing this great governmental duty, by meetings at barbecues, listening to electioneering orations, and enlightening their own minds with due potations of whiskey for that purpose, would alone render the voters the most unsuccessful rivals of operatives, who are relieved from all governmental cares and duties, without sufficient bread or covering, and who are willing to labor all day and night—and, in the course of that labor, without permitting their minds to wander into governmental cogitations, but to keep them perpetually confined to one single conception, and their bodies to one single physical action, for the perfection of their mechanical art, be it what it may. Mr. Clay's electioneering, barbecue orations alone, would

call for more time from the operative voters, under the general suffrage provisions, than would throw them far in the background in their rivalship with the British operatives. The writer deems the business of manufacturing for exportation in rivalship with European manufactories in foreign markets, absolutely incompatible with the right of general suffrage, wherever that right may be executed—whether in Massachusetts, Kentucky, or elsewhere: and this consideration alone, ought to have determined the tariff-schemers from the wild attempt to form a competition with British manufactories in foreign markets: for, surely, nothing can be more unwise, as well as unjust, than buying a foreign market by bounties, drawn from other occupations. From all these considerations, the writer thinks, that the Western states, composing this supposed confederacy, having but little connection, and no rivalship with foreign nations, would have very little dependence upon them, and may be considered quite independent of them, but not a whit the better, nor the wiser, nor the wealthier, nor the happier, from the absence of all connection with the commercial nations of Europe.

Very far different would be the relations between the States composing the Southern supposed confederacy, consisting of Tennessee, Alabama, Mississippi, Missouri, Louisiana, Florida, Georgia, South and North Carolinas and Virginia; and the commercial states of Europe. These states present no points of rivalship whatever with the commercial states of Europe; but are the best customers they have in the world—whilst they have no taste for manufacturing except household manufactures, and but little disposition for commerce; their native productions consist precisely of the materials, in most demand, in other commercial countries—cotton, breadstuff, rice and tobacco. These states, therefore, are the best customers of the commercial nations of Europe, without any one material point of rivalship; of course, all their relations are friendly, none hostile; and whilst the native productions of these states are much wanted by all the commercial and manufacturing nations

of Europe, their manufactured goods are much wanted in those states; hence the relations between them consist in mutual accommodations and mutual interests.

The writer thinks this relationship of mutual accommodation and interest, might produce a mutual dependence between these States and the commercial states of Europe, particularly Great Britain; but this mutual dependence, would necessarily be attended with a mutual, relative independence, which is the most desirable relation that can exist between foreign nations. Out of $50,000,000 exports from the whole United States in 1828, cotton alone produced nearly $30,000,000. Add then, the productions of breadstuffs, rice and tobacco and at least $40,000,000 out of $50,000,000 will be found to be produced by the exports from these states alone; and this great relative amount would have been, and now would be, much enhanced, if British manufactured goods were freely taken as exchange for consumption here. This measure would be as much to the true interest of these states, as of Great Britain. This statement is made in general terms; but the proportions of the products of the exports, will be found sufficient for coming to the great general results. Those who choose to make more minute calculations, may do so, by turning to the treasury reports of 1828—from which this outline view in round numbers is taken. Several most instructive lessons may be learned from these facts.

First. It will most clearly appear, that in the event of disunion, these states would be placed in the most friendly relations with the commercial nations of Europe, grounded upon the best possible basis—that of mutual accommodation and interest, whilst the Northern and Eastern sections of the Union, would be placed in a state of unalterable rivalship, and of course, of hostility; and, therefore, in the event of disunion, that the southern states would have nothing to fear from the hostile spirit of Europe, whilst the Northern and Eastern section of the Union, would have to encounter all the hostilities arising from jealous rivalships, fixed in the nature of things, and, therefore, unalterable by artificial expedients.

Another lesson equally instructive will be found in the relations which must necessarily arise between these different sections of the present union, in the event of separation. It is admitted as an universal truth amongst commercial nations, that the annual imports of every nation will always be nearly equal to its exports. Hence, the southern states must import into the United States, or, in other words, the imports into the United States grounded upon the exports from these states, must be equal to $40,000,000, whilst the imports grounded upon the exports from all the rest of the United States do not much exceed $50,000,000; it must, therefore, irresistibly follow, that during the existing union, the Southern States contribute four-fifths of the whole revenue, besides the contribution they pay to the manufactories under the tariff acts. The amount then paid is enormous; but the writer has no means at this time to make an accurate estimation thereof—whilst out of this enormous amount of contributions, a very small portion thereof is returned to the contributing states. In the event of disunion, the Northern and Eastern states would be stripped of all participation in these contributions, and left to their own resources, which they will find meagre enough, whenever the trial shall be made; and hence it is rendered evident, that disunion would not be found equally disastrous to every state in the Union. In that event, the southern states would be left to the enjoyment of all the good things their God has given them, and to which, they have superadded their own labor; the proceeds of which are now transferred to the northern and eastern states for their enjoyment. This singular and unjust effort is produced by the tariff and other artificial, legislative contrivances. Whenever the amount contributed through these means shall become perfectly ascertained, and their unequal distributions known, then either the tariff must be put down to a simple revenue system, or this union must be dissolved. No people, possessing common sense enough to understand the enormous amount obtained from them, through the tariff and other artificial expedients, and common courage enough to defend their own rights, will ever long submit to such an unnatural and unprincipled state of things.

The writer is well aware, that the southern people have been often threatened with the superior physical force of the other parts of the United States. Mr. Clay most significantly reminds the Southerns, that the disproportion of physical force is as 8,000,000 to 2,000,000 whilst the productive means of the Southerns are as 4 to 1 in their favor. This may be true in regard to physical force as a result from the census of the whole people of the United States; but it is not true, in relation to the object for which the threat was made. That is in plain English, for coercing the Southerns into a subjection to the tariff acts; to the forcible plunder of the southern people. In a deplorable, wicked purpose of the kind, the people of the United States would not be the only people consulted on that occasion. No coercive expedient could be resorted to by the people of one part of the United States against another without calling into action the people of Europe—and on which side would they be found? Surely, on the side of their interest. On which side is that? On the side of their rivals?—or the side of their customers? And who would have the money to pay them? The section which exports $40,000,000 or that which exports $10,000,000? The author of "Union" most justly says: "Once divided, we should form stronger bonds of union with foreign nations, than with one another." Most certainly we should; and who possesses the means of uniting to advantage in those stronger bonds? Certainly the southern sections; not only through commercial means, but money means—40,000,000 to 10,000,000 money, is truly said to be the sinew of war itself. Money is power—and can easily be converted into physical power. The southern people, therefore, have no cause to be intimidated by these threats. In case of disunion the northern and eastern people would become much more harmless, when kept to themselves, than they are with union, enjoying all the aids they now get from their connection with the southern people. What would become of the northern and eastern people, if cut off from all commercial relations with the southern people? What would become of their navigation? What of

their manufacturing industry, so far as cotton is employed as an essential fabric?—and so long as their manufactured goods should be excluded from the southern market?

Notwithstanding the southern people have so little to fear, and so much to gain from disunion, comparatively with the northern and eastern people, the writer would most sincerely deprecate such an event; but he has no hesitation in saying, he would infinitely prefer disunion, with all its hazards, to the Tariff Acts; which, he sincerely believes, imposes upon him an unprincipled, degrading tribute. He would prefer any calamity, to the condition of a tributary slave. Turning and twisting the Tariff Acts in every possible way to avoid it, they must be brought to it at last; and whenever their real effects shall come to be universally understood, is it possible that freemen should tolerate them?

There are other most important and instructive views, which may be hereafter taken of this deeply interesting subject,—particularly as to the grounds upon which union ought to be preferred to disunion, so long as the Constitution is observed, in the practical administration of the government, and its great original principles, generality and equality amongst all the several states in the Union strictly regarded. The writer has sketched out this number too rapidly, for its importance. His apology is, that it is a subject, which has long been familiar to his contemplation, and he, therefore, hopes no material errors have occurred; but if it should turn out otherwise, he will take pleasure in correcting them hereafter. His real object now is, to invite the attention of others, to the just development of the subject. If he should have succeeded in effecting that, one great object will be attained.

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